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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1943

No. 98

SARAH PRINCE, APPELLANT,

vs.

COMMONWEALTH OF MASSACHUSETTS

APPEAL FROM THE SUPERIOR COURT, COUNTY OF PLYMOUTH, STATE OF MASSACHUSETTS

FILED JUNE 11, 1943.

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IN SUPERIOR COURT OF PLYMOUTH COUNTY, COMMONWEALTH OF MASSACHUSETTS

No. 21069 Cr.

No. 21070 Cr.

No. 21071 Cr.

COMMONWEALTH OF MASSACHUSETTS

vs.

SARAH PRINCE

Defendant's Substitute Bill of Exceptions—Filed August 6, 1942

These were prosecutions on three complaints brought against the defendant for violation of General Laws, Ter. Ed., Chapter 149, sections 79, 80 and 81.

The complaints which issued thereunder are as follows:

COMPLAINT—No. 21069

Under Section 79. "To the District Court of Brockton holden at Brockton for the transaction of criminal business within the County of Plymouth George S. Perkins of Brockton, in said County of Plymouth, in behalf of the Commonwealth of Massachusetts, on the second day of January in the year of our Lord one thousand nine hundred and forty-two, on oath complains that Sarah Prince of Brockton in said County of Plymouth, on the eighteenth day of December in the year of our Lord one thousand nine hundred forty-one, at Brockton in said County of Plymouth did refuse to give to George S. Perkins, attendance officer of said Brockton, certain information, to wit: the name and age of Betty M. Simmons, a minor under the age of eighteen years, such information being required for the proper enforcement of the law."

COMPLAINT—No. 21070

Under Section 80. (Same in substance as first complaint except for the following:) "did furnish to one Betty M. Simmons, a girl under the age of eighteen years, certain

[fol. 2] articles, to wit: magazines, she, the said Sarah Prince well knowing that the said Betty M. Simmons was to sell the said magazines unlawfully."

COMPLAINT—No. 21071

Under Section 81. (Same in substance as first complaint except for the following:) "was the custodian of Betty M. Simmons, a minor, and did permit the said Betty M. Simmons to work contrary to law."

Sections of the statutes under which the complaints issued:

"Section 79. PENALTY FOR HINDERING INSPECTORS, ETC.—Any person who hinders or delays any authorized inspector or supervisor of attendance in the performance of his duties, or who refuses to admit to or locks out any such inspector or supervisor from any place which such inspector or supervisor is authorized to inspect, or who refuses to give to such inspector or supervisor such information as may be required for the proper enforcement of sections sixty to seventy-four, inclusive, shall be punished by a fine of not less than twenty-five nor more than two hundred dollars or by imprisonment for not more than two months, or both. (1913, 831, sec. 21; 1931, 394, sec. 151.)

"Section 80. PENALTY FOR FURNISHING ARTICLES TO BE ILLEGALLY SOLD BY MINORS ENGAGED IN STREET TRADES, OR AIDING IN VIOLATION OF SECTIONS 69-73.—Whoever furnishes or sells to any minor any article of any description with the knowledge that the minor intends to sell such article in violation of any provision of sections sixty-nine to seventy-three, inclusive, or after having received written notice to this effect from any officer charged with the enforcement thereof, or knowingly procures or encourages any minor to violate any provisions of said sections, shall be punished by a fine of not less than ten nor more than two hundred dollars or by imprisonment for not more than two months, or both. (1913, 831, sec. 22.)

"Section 81. PENALTY ON PARENT OR GUARDIAN, ETC.—Any parent, guardian or custodian having a minor under his [fol. 3] control who compels or permits such minor to work in violation of any provision of sections sixty to seventy-four, inclusive, or knowingly certifies to any materially false statement for the purpose of obtaining the illegal em-

ployment of such minor, shall for a first offence be punished by a fine of not less than two nor more than ten dollars or by imprisonment for not more than five days, or both; and for a subsequent offence by a fine of not less than five nor more than twenty-five dollars or by imprisonment for not more than ten days, or both. (1913, 831, sec. 23.)"

On February 10, 1942 the cases came on to be heard by appeal from the District Court of Brockton in the Superior Court for Plymouth County sitting at Brockton before George H. W. Hayes, a Justice of a District Court presiding in the Superior Court under provisions of Chapter 469 of Acts of 1923 and Amendatory Acts. The defendant pleaded "Not Guilty" to all three complaints and waived her right to trial by Jury. On February 11, 1942, at the completion of the trial, the defendant was found guilty on all three complaints. Before trial the defendant filed the following motion to dismiss and/or quash in all three cases, to wit:

DEFENJANT'S MOTIONS TO DISMISS AND/OR QUASH
(THREE CASES)

"And now comes the defendant in the above entitled action and moves that the same be dismissed and/or quashed and assigns for cause the following:

"1. That the complaints are invalid and do not state facts sufficient to constitute offenses under the law.

"2. That General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, are invalid and void on their face and also as construed and applied in this case by reason that they operate so as to violate the First Amendment to the Constitution of the United States for they place unreasonable restraints upon the Freedom of Speech, the Freedom of Press, and the Freedom of Worship of both the defendant and the minor child and thus violate the due process of law clause of the Fourteenth Amendment to the Constitution of the United States.

[fol. 4] "3. That General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, are invalid and void on their face and also as construed and applied in this case by reason that they operate so as to violate the Fourteenth Amendment to the Constitution of the United States, which Amendment had the effect of making said First Amend-

ment applicable to the States, as they place unreasonable restraints upon the Freedom of Speech, the Freedom of Press, and the Freedom of Worship both as to the defendant and the minor child and thus are violative of the Due Process of Law Clause of the Fourteenth Amendment to the Constitution of the United States.

"4. That General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, are invalid and void on their face and also as construed and applied in this case by reason that they operate so as to violate the Equal Protection of the Laws Clause of the Fourteenth Amendment to the Constitution of the United States in that they place unreasonable restraints on the exercise of Free Speech, Free Press, and Free Worship for they place children and minors under a certain age in an unreasonable classification.

"5. That General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, are invalid and void on their face and also as construed and applied in this case by reason that they deprive children under certain ages of the privileges and immunities of citizens of the United States contrary to the Fourteenth Amendment to the Constitution of the United States in that minor children under the ages as prescribed in the various sections are denied the unencumbered right of pursuing an occupation or calling, which occupation or calling is granted unencumbered to those who are above the ages as prescribed in the statutes.

"6. With particular reference to General Laws Ter. Ed. Chapter 149 Section 79, said section is unconstitutional on its face and also as construed and applied in this case by reason that it punishes for failure to give evidence against one's self contrary to the Fifth Amendment to the Constitution of the United States.

"7. That General Laws Ter. Ed. Chapter 149 Section 60 through 83, as amended, cannot be applied to the facts in this case and therefore the defendant is Not Guilty on all complaints.

[fol. 5] "8. That there is insufficient evidence to warrant a finding of Guilty on any of the Complaints and therefore the defendant is Not Guilty on all the Complaints.

By her attorneys,

—Alfred A. Albert, Hayden Covington."

The Court denied the motion. The defendant seasonably objected and took exceptions to the Court's denial of the motions to dismiss and/or quash.

At the conclusion of the Commonwealth's evidence the defendant renewed her motions to dismiss and/or quash as to all three complaints and filed her motion for directed finding on all three complaints, as follows, to wit:

"DEFENDANT'S MOTION FOR DIRECTED FINDING

(THREE CASES)

"And now comes the defendant in the above entitled action and moves that the Court direct a finding in her favor on all three complaints, and assigns for cause thereof the following:

"1. That the complaints are invalid and do not state facts sufficient to constitute offenses under the law.

"2. That General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, are invalid and void on their face and also as construed and applied in this case by reason that they operate so as to violate the First Amendment to the Constitution of the United States for they place unreasonable restraints upon the Freedom of Speech, the Freedom of Press, and the Freedom of Worship of both the defendant and the minor child and thus violate the due process of law clause of the Fourteenth Amendment to the Constitution of the United States.

"3. That General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, are invalid and void on their face and also as construed and applied in this case by reason that they operate so as to violate the Fourteenth [fol. 6] Amendment to the Constitution of the United States, which Amendment had the effect of making said First Amendment applicable to the States, as they place unreasonable restraints upon the Freedom of Speech, the Freedom of Press, and the Freedom of Worship both as to the defendant and the minor child and thus are violative of the Due Process of Law Clause of the Fourteenth Amendment to the Constitution of the United States.

"4. That General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, are invalid and void on their

face and also as construed and applied in this case by reason that they operate so as to violate the Equal Protection of the Laws Clause of the Fourteenth Amendment to the Constitution of the United States in that they place unreasonable restraints on the exercise of Free Speech, Free Press, and Free Worship for they place children and minors under a certain age in an unreasonable classification.

"5. That General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, are invalid and void on their face and also as construed and applied in this case by reason that they deprive children under certain ages of the privileges and immunites of citizens of the United States contrary to the Fourteenth Amendment to the Constitution of the United States in that minor children under the ages as prescribed in the various sections are denied the unencumbered right of pursuing an occupation or calling, which occupation or calling is granted unencumbered to those who are above the ages as prescribed in the statutes.

"6. With particular reference to General Laws Ter. Ed. Chapter 149 Section 79, said section is unconstitutional on its face and also as construed and applied in this case by reason that it punishes for failure to give evidence against one's self contrary to the Fifth Amendment to the Constitution of the United States.

"7. That General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, cannot be applied to the facts in this case and therefore the defendant is Not Guilty on all complaints.

"8. That there is insufficient evidence to warrant a finding of Guilty on any of the Complaints and therefore the defendant is Not Guilty on all the complaints.

[fol. 7] "9. That upon all the evidence and the law taken in the most unfavorable light to the defendant, there is insufficient evidence to warrant her conviction on any of the complaints.

By her attorneys, Alfred A. Albert, Hayden Covington".

Upon inquiry by the Court if the defendant rested, the defendant refused to rest, so the Court declined to rule upon these motions.

The defendant, at the conclusion of all the evidence, again renewed her motions to dismiss and/or quash, and her motion for directed finding. Both motions were denied and the defendant seasonably objected and took exceptions to the Court's denial of both motions.

At this juncture the defendant filed her requests for rulings as follows, to wit:

DEFENDANT'S REQUESTS FOR RULINGS

(THREE CASES)

"And now comes the defendant in the above entitled cases and makes the following requests for rulings.

"1. That upon all the evidence the defendant is Not Guilty.

"2. That upon all the law the defendant is Not Guilty.

"3. That upon all the evidence the Court must find that the cause of the defendant's arrest were the acts of the defendant and the minor child involved in engaging in their way of worship.

"4. If the court finds that the cause of the defendant's arrest were the acts of the defendant and the minor child in that they were engaging in their way of worship, then the court must rule that General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, do not apply to this defendant as the court should not impute to any legislation a purpose of action against religion.

Holy Trinty Church v. U. S., 143 U. S. 457.

[fol. 8] "5. That there is insufficient evidence to warrant a finding that the defendant was to receive or derive any compensation, remuneration or pecuniary benefit or profit from the furnishing of magazines or other literature to the minor child.

"6. If the Court should find that there is insufficient evidence to warrant a finding that the defendant was to receive or derive any compensation, remuneration or pecuniary benefit or profit from the furnishing of magazines or other literature to the minor child, then the Court must find the defendant Not Guilty.

"7. That upon all the evidence the Court must find that the defendant did not furnish magazines or other literature

to the minor child for the purpose of having said minor child sell said magazines or other literature.

"8. If the Court finds that the defendant did not furnish magazines or other literature to said minor child for the purpose of having said minor child sell said magazines or other literature, then the Court must find the defendant Not Guilty.

"9. If upon all the evidence the Court should find that the defendant did furnish to Betty M. Simmons magazines or other literature for the purpose of having said Betty M. Simmons sell said magazines or other literature contrary to the law, then the Court must find the defendant Not Guilty as it is immaterial whether said Betty M. Simmons was to sell, distribute freely or receive contributions for said magazines or other literature.

Lovell v. Griffin, 303 U. S. 444;
Hammon v. Haverhill, 100 Fed. (2) 82.

"10. That there is insufficient evidence to warrant a finding that the defendant knew that the minor child, Betty M. Simmons, intended to sell magazines or other literature unlawfully.

"11. If the Court should find that the defendant did not furnish Betty M. Simmons magazines or other literature knowing that said Betty M. Simmons intended to sell the same unlawfully, then the Court must find the defendant Not Guilty of the violation of General Laws Ter. Ed. Chapter 149 Section 80.

[fol. 9] "12. That there is insufficient evidence to warrant a conviction under General Laws Ter. Ed. Chapter 149 Section 79, and there is insufficient evidence to warrant a conviction under General Laws Ter. Ed. Chapter 149 Section 81.

"13. That upon all the evidence and the law the Court must find that General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, are invalid and void on their face and also as construed and applied in this case because they operate to deprive the defendant and the minor child of their rights of Free Speech, Free Press and Free Worship in contravention of the Due Process, the Equal Protection of the Laws and Privileges and Immunities Clauses of the

Fourteenth Amendment to the Constitution of the United States.

By her attorneys, Alfred A. Albert, Hayden Covington"

COURT'S FINDINGS AND RULINGS

At the conclusion of argument by both counsel the Court made the following findings and rulings as to the defendant's requests for rulings:

Numbers 1, 2, 3, 5, 7, 9, 10, 12 and 13 denied.

The defendant seasonable objected and took exceptions to the Court's denial of numbers 1, 2, 3, 5, 7, 9, 10, 12 and 13.

The Court on Number 4: "On number 4, I do not find that the cause of the defendant's arrest was that they, the defendant and Betty M. Simmons, were engaging in their way of worship. I do not so find. Worship in this case, religion in this case, Christianity in this case, are not the questions at issue."

The Court on Number 6: "On 6, I find that the magazines were for sale. Offer for sale is the offering of an article for a price. I find that the magazines were offered for a price.

"Mr. Albert: 6 says that if the court should find that there is insufficient evidence to warrant a finding that the [fol. 10] defendant was to receive or derive any compensation, remuneration or pecuniary benefit or profit from the furnishing of magazines. Do you find there was a profit to be received?

"Court: I do find there was sufficient evidence to warrant a finding that the defendant was to receive a price for these magazines being sold by this child. What she did do with it afterwards I find is of no importance. Whether she made a profit or not is not before me."

The Court on Number 8: "On 8, I do not find as requested, but do find that the defendant did furnish magazines to said Betty M. Simmons, a minor of the age of nine years, for the purpose of having the minor child sell the magazines."

The Court on Number 11: "On 11, I do not find as requested, but do find the magazines were furnished by the defendant to Betty M. Simmons, knowing that Betty M. Simmons intended to sell the same."

The Court denied requests on numbers 4, 6, 8 and 11. The defendant seasonably objected and took exceptions to the Court's denial of requests numbers 4, 6, 8 and 11.

Finding of Guilty

The Court found the defendant Guilty on all three complaints, as follows: "I will say that the question of denomination, sect or religion is not the question at issue. Whether the child was selling the magazines that have been mentioned, or some other magazine, to illustrate, the Ladies Home Journal, the child is prevented from doing that under the statute; that I disregard the substance or the contents of the magazines from the standpoint of the question of religion. The question of the practice of religion is not before me. Therefore, I am passing upon the sole question of whether Sarah Prince did furnish to Betty Simmons magazines, knowing that Betty Simmons was to sell the magazines, unlawfully; secondly, being the custodian of Betty Simmons, a minor, of nine years of age; did permit the work contrary to law, and third, did refuse to give information to an attendance officer as required by the statute. I cannot on the evidence before me make any other finding than guilty on all three."

The defendant seasonably objected and took exceptions to the Court's findings of "Guilty."

[fol. 11] During the course of the trial the defendant seasonably objected and took exceptions to the court's refusal to admit certain testimony and evidence, as follows, to wit:—

1. Cross examination of Betty M. Simmons, the minor mentioned in the Complaints, Commonwealth witness.

"Q. Are you one of Jehovah's Witnesses, Betty?
"A. Yes.
"Q. And as such are you are an ordained minister?
"A. Yes.

"Mr. Clark: I object.
"Mr. Albert: Let us see if she knows what it means.
"Mr. Clark: I still object.
"Court: I don't know whether this is material.
"Mr. Clark: I want to make it understood that the State does not care whether this girl is an ordained minister or

not. The only position the Commonwealth takes is that she is a minor under 18 years of age.

"Court: As a preliminary question I will allow you to ask the question.

"Q. Just what is that, Betty—what is an ordained minister?

"Court: I will exclude that.

"Mr. Albert: The court will note my exception.

"Court: I will save your rights.

"Mr. Albert: I will submit as offer of proof that this testimony would show she is an ordained minister and as such to preach the gospel by the distribution of literature on the streets, therefor- coming within the provisions of my motions with regard to freedom of worship."

2. Further Cross-examination of said Betty M. Simmons.

"Q. You state that you distribute this literature because God commands you to do so and because you love the Lord, is that correct?

"A. Yes.

[fol. 12] "Q. What will happen if you don't distribute this literature?

"Mr. Clark: I object.

"Court: Excluded.

"Mr. Albert: The court will note my exception. This evidence would show that according to this girl's conscience if she does not do this work she will be condemned to everlasting destruction at Armageddon, and she conscientiously and sincerely believes this.

"Court: The question is excluded. I will save your rights on it."

3. Further cross examination of said Betty M. Simmons.

"Q. Did you ever during that December 18 give any away? (Referring to literature)

"A. No.

"Q. Do you ever give any away?

"A. Once in a while.

"Q. Suppose I came up to you on the street and said 'I cannot afford 5¢, will you give me one'?

"Mr. Clark: I object.

"Court: Excluded.

"Mr. Albert: The court will note my exception.
"Court: I will save your rights."

4. Direct examination of Sarah Prince, Defendant.

"Q. What is your full name?
"A. Sarah Ann Price.
"Q. Where do you live?
"A. I reside at 1146 Court Street.
"Q. And that is in the City of Brocktoh?
"A. Brockton, Massachusetts.
"Q. How long have you resided there?
"A. Practically all my life. I am 31.
[fol. 13] "Q. And what is your occupation?
"A. My occupation is of an ordained minister of the gospel. I am fully consecrated to do the will of Almighty God and obey his commandments laid down in the Bible.
"Q. What are those commandments?
"A. Isa. 43:——

"Mr. Clark: I object.
"Court: Excluded.
"Mr. Albert: The court will note my exception. I will submit as offer of proof that this woman obeys the commandment of God to preach the gospel from house to house, on the street, and it is her conception of her way of worship.
"Court: I will save your rights."

5. Direct examination of Henry Judson, defendant's witness.

"Q. Do you know of your own personal knowledge the purposes for which the Watch Tower Bible and Tract Society is incorporated?

"Mr. Clark: I object.
"Court: Excluded.
"Mr. Albert: The court will note my exception. The purposes for the question is the evidence would show that the Watch Tower Bible & Tract Society is a charitable corporation, incorporated for the purposes of aiding the work of Jehovah God in bringing the message of good will through the publication of literature and pamphlets to the people, and for the further purpose that there should be no com-

mercial—or that there is no commercial, pecuniary or personal gain involved in the set-up of the corporation.

"Court: I will say to your last statement that I would feel that he could not of his own statement prove the object for which it is incorporated when it can be shown by documentary evidence.

"Mr. Albert: It is from the State of New York.

[fol. 14] "Court: Regardless of that I will exclude the question, and will save your rights."

6. Direct examination of Henry Judson, defendant's witness.

"Q. Did you supervise the receipt of contributions and sending of them to the Watch Tower Bible & Tract Society?

"A. I supervised that, too, yes.

"Q. Will you explain to the court, please, once again—I'm not sure I got this definitely—just how a person in the position, let us say, of the defendent in this case, how she makes her contribution, and just exactly what happens to the money thereafter.

"Mr. Clark: I object to that. He was not there.

"Mr. Albert: If he knows of his own personal knowledge——

"Court: If he has any knowledge on this particular case, he may testify as to what happened in this particular case to money received by this woman. What is the question again? (The question was read.) I will exclude it in that form.

"Mr. Albert: The court will note my exception. I will submit as offer of proof that the evidence would show that the witness would testify that the contribution received from the various members of Jehovah's Witnesses by the local company servant is a contribution received for literature, and that that contribution goes to the Watch Tower Bible & Tract Society for the purpose of printing additional literature, that there is only one contribution made for the literature that any of Jehovah's Witnesses themselves individually receive, and the purpose of that is to show, of course, that there is no profit and no commercial or pecuniary benefits in the work of Jehovah's Witnesses."

Statement of Facts

Defendant's Counsel agreed that on December 18, 1941, Sarah Prince was the custodian of Betty M. Simmons.

There was evidence that on December 18, 1941 Betty M. Simmons was in her ninth year and attending the Shaw School in Brockton; that she was living with the defendant, [fol. 15] her aunt, in Brockton; that she is one of Jehovah's Witnesses and as such an ordained minister of Jehovah God. That about 8:45 p. m. on December 18, 1941, she was with the defendant on the corner of Legion Parkway and Main Street, public streets, in the City of Brockton. Suspended from her shoulder she carried a magazine bag on which was printed the following: "Watchtower explains the Theocratic Government" "5¢ a copy". In the bag were copies of the publications "Watchtower" and "Consolation". In one of her hands she held up a copy of each so that passersby could see them, and saying at the same time "Remedy for World Distress" "Read the Watchtower".

Betty M. Simmons testified that she was on the street distributing literature because "I love the Lord and He commands us to" and because it was her way of worship. Under cross-examination she testified that she was taking contributions of five cents for both magazines or more if people should give more, that she was not selling them, and that on the night in question she did not receive any contributions nor did she give any magazines away although once in a while at some previous time she had given some away; that when she received any contributions she never kept any of the money but gave it all to her aunt, the Defendant; that before she went on the street that night the defendant did not want to take her, but that she, Betty, started to cry and wanted to go; that upon her own request the defendant gave her the bag and magazines.

There was testimony from the defendant that she did not tell her, Betty M. Simmons, to get contributions but did tell her where to stand. While they were on the street, Mr. Perkins, the Supervisor of Attendance of the Public Schools of Brockton came over and asked the defendant for Betty's name, and the defendant said, "She belongs to me and you know her. She attends the Shaw School", and Mr. Perkins replied, "I am sorry, I don't know her". Then Mr. Perkins asked Betty what her name was and the defendant said, "Tell him to ask your aunt". Sarah Prince

did not tell Mr. Perkins the child's name. Mr. Perkins did not ask either the defendant or Betty M. Simmons anything about age.

George S. Perkins, Commonwealth Witness, testified that he was the Supervisor of Attendance of the Public Schools [fol. 16] of Brockton, appointed on April 1, 1931, and that his duties "Are to investigate all cases pertaining to school attendance, to enforce the law on minors, and in street trades to insist on enforcement of the Child Labor Laws:" that he knew the defendant two years previous to December 18, 1941 but he did not know Betty M. Simmons prior to December 18, 1941; that on the day in question about 8:45 p. m. he observed the defendant on the southwest corner of Legion Parkway; with the defendant was Betty M. Simmons who was standing about twenty feet away. The little girl was holding up in her hand so that pedestrians could see, a copy of "Watchtower" and "Consolation" magazines, which were in a heavy cellophane protective cover, and suspended from her shoulder was a canvas magazine bag and on that canvas bag in bold type was printed "Watchtower and Consolation 5¢ per Copy", that he stepped up to the little girl and the defendant came up. The following then took place: (Quoting from the testimony of Mr. Perkins)

"A. The defendant came up and I then turned to the defendant and asked her what the little girl's name was. The defendant answered—she replied, 'You know her, she attends the Shaw School.' I says, 'I'm sorry but I don't know her' and I then turned to the little girl and asked her her name. She said, 'Ask my aunt.' So I said, 'Mrs. Prince, please, this is necessary for me to ask you this. Please let me have the little girl's name.' She did not tell me.

"Q. At some time did you ask the little girl her name in the presence of the defendant?

"A. Yes. I then turned to the little girl and asked her name again. She did not answer.

"Q. What did the defendant say?

"A. She said, 'Don't tell him. Tell him to ask your aunt'.

"A. I asked the defendant if she furnished the magazines and she replied, 'Sure, I did. And neither you nor anybody else can stop me'.

"Court: What did you say to her?

"A. I said, 'This is my job, Mrs. Prince, and I told you before that you should not furnish magazines and allow your children out on the street selling.' I said, 'About a year ago I warned you and your son, Donald and William, [fol. 17] were out selling, and I took the magazines away from them at the time and went to your home and you were not at home, and I went to your sister's house and talked with you for a good half hour explaining the law to you, I even let you read the law.' I said, 'I am surprised you have this little girl only eight years old out selling magazines on the street.'

"Q. What did she say?

"A. She said, 'Well, I have a right to and you're nothing but an attendance officer, and if you go get a uniform with brass buttons perhaps I will listen to you.' Then she said, 'We're quitting now and going home. I have to get the little girl to bed' and she didn't even give me the name at the time. It was then about quarter of nine.

"Q. At any time during that conversation in respect to your question as to what the little girl's name was, did Mrs. Prince ever give you the girl's name?

"A. No.

"Q. And during that period whether or not she refused in so many words to give the girl's name?

"A. Yes. She refused."

The defendant also said, "You know her, she attends the Shaw School", to which Perkins said, "I'm sorry but I don't know her". He then asked the little girl her name, but the little girl said, "Ask my aunt". He then asked the defendant, "Mrs. Prince, please, this is necessary for me to ask you this. Please let me have the little girl's name", but the defendant insisted that Mr. Perkins knew the name. He again asked the little girl her name, but the defendant said, "Don't tell him. Tell him to ask your aunt." The defendant told him, Mr. Perkins, that she had furnished the magazines to the child. He told the defendant that he had spoken to her about a year before relative to other children and that he told her about the law, and the defendant said she, Betty had a right to do what she, Betty, was then doing. The defendant at no time on December 18, 1941 gave him the little girl's name; that he

found out the girl's name by calling on the phone the Shaw [fol. 18] School on the following day and by giving Betty's description; that in October of 1940, he told the defendant that it was against the Massachusetts law to allow children on the street selling magazines; that he had shown her the law applicable thereto and had written her a letter explaining the law, and that since then up to December 18, 1941, though he had seen the defendant several times, they had never spoken further about the matter. Further testimony was to the effect that at the time of his conversation with the defendant on December 18, 1941, Mr. Perkins did not take any of the magazines or the bag from the defendant or the child, but a few days later he purchased copies of "Watchtower" and "Consolation" in Quincy. He stated that on December 18, 1941, further conversation with the defendant was had to the effect that the defendant told him the child was on her own, that she had cried, and that the defendant let the child come. Perkins testified that he did not ask the defendant nor the child what happened with any money that either might receive, nor whether there was any profit or pecuniary benefit being realized. Perkins further stated that the complaint for permitting Betty M. Simmons to work contrary to the law was that no girl under eighteen could be on the street with literature. He did not hear Betty M. Simmons say "5¢ per copy". A few minutes after talking to Perkins on December 18, 1941, the defendant walked away from Mr. Perkins and was joined by a Mr. Flint. Mr. Perkins came up and some discussion was had about the magazine work to the effect that the little girl was not selling them but was receiving contributions and that there was no profit involved. Perkins further testified that on October 4, 1940, he mailed the defendant a letter advising her of the law in connection with her son, William Prince, to the effect that boys under 12 and girls under 18 years of age could not offer for sale newspapers or magazines, and that whoever furnishes or sells to minors with knowledge that the minor intends to sell such articles was violating the law.

Copies of "Watchtower" and "Consolation" were introduced into evidence and they were marked. It was agreed that these were similar to those being carried by Betty M. Simmons on December 18, 1941, and that they were introduced and admitted "for any purposes applicable to these complaints". It was also agreed that Main Street and

Legion Parkway were public ways. The Commonwealth then rested.

[fol. 19] The defendant, Sarah Prince, testified that she resided in Brocton practically all her life, 31 years, and that she was one of Jehovah's Witnesses and as such an ordained minister of the gospel "fully consecrated to do the will of Almighty God and obey his commandments laid down in the Bible", and that she had been an ordained minister for about five years as evidence as to her occupation. An identification card showing such authority was introduced in evidence and marked. The card purported to show that she was ordained by Jehovah God by taking her stand according to Isaiah 61:1, 2, where it is written, "The spirit of Jehovah God is upon me because Jehovah has annointed me to preach good tidings unto the meek; he hath sent me to bind up the broken-hearted, to proclaim liberty to the captives and the opening of the prisons to them that are bound; to proclaim the acceptable year of our Lord, the day of vengeance of our God, and to comfort all that mourn." Also at Isaiah 43:10-12, it is written, "Ye are my witnesses, saith Jehovah, that I am God; that ye may know and believe and understand that I am He; before me there was no god formed, neither shall there be after me; I, even I, am Jehovah, beside me there is no god. I have declared and saved and showed when there was no strange god among you, therefore ye are my witnesses, saith Jehovah, that I am God."

She further testified to become an ordained minister that it was not necessary to go to school; that she was annointed and ordained as a minister by Jehovah God; and that one became an ordained minister by taking his or her stand on the side of Jehovah God and Christ Jesus.

On December 18, 1941 she was on Legion Parkway walking between Main and High Streets. Betty M. Simmons was with her and both had the magazines "Watchtower" and "Consolation" and magazine bags; that before they had come on the street "The children asked to go and I said no and started out myself, and they started to holler and cry so I said 'Come along', but I never take them out at night." That Betty M. Simmons asked for the bag and literature and that she gave them to her; that on the night in question neither she nor Betty M. Simmons received any contributions nor gave any literature away. When Betty M. Simmons did receive a contribution it was given to the

defendant, who in turn gave it over to Roger Flint, Com-
[fol. 20] pany Servant, the individual in charge of local distribution. For such sums turned in or personal contributions she would receive more literature, and if she had no contribution she could receive the literature anyway, by asking for it; that she did not do the work for profit nor pecuniary gain, that the "5¢ per copy" on the magazine bag meant "you can contribute 5¢ and have a copy. If you have not the 5¢ and are interested in reading, we will give it to you. It is not a selfish work or carried on for any pecuniary gain." The Watch Tower Bible & Tract Society, Inc. is the publisher of the literature and the connection that Jehovah's Witnesses have with the corporation is that the corporation "is the channel Jehovah God is using to divide the people, to warn the people of good will and show them the way of safety and refuge under His Kingdom. If they don't go in they will all die at Armageddon at the destruction of Christ Jesus." The literature "Watchtower" and "Consolation" were published in pursuance of this belief and she received some of such literature from Roger Flint and gave some to Betty Simmons on December 18, 1941. The defendant further testified "Jehovah God has commanded the people to come out of the religions, Catholic, Protestant, Jew or Gentile. That is the first thing that is going down, and all who are in with religion will perish with religion. It is on its last skids now. That is why we are on the street corners. Christianity will survive, not religion. The destruction of the wicked at that time will be tremendous, far exceeding anything in human history. The nations of Christendom are forgetters of God. His name has been blasphemed and reproached down through the ages. But He says, 'They shall know that I am Jehovah'. For no other reason was I on the street corner, and my children, but to tell the people of the one place of safety, that is in the kingdom of God under Christ that we have prayed for. Most people pray automatically for that kingdom."

At about 20 minutes of 9 on December 18, 1941 while the defendant was on the street Mr. Perkins approached her. The defendant testified, "I was doing this street work, preaching the gospel; Mr. Perkins approached my girl standing close to me, then he turned to me and I thought it was some one who wanted literature, so I turned around and there he stood. He said, 'You know it is very late and

this child is out and she should be home in bed.' I said, [fol. 21] 'Mr. Perkins, we have been through this before. You know this child is exercising her God-given right and her constitutional right to preach the gospel, and no creature has a right to interfere with God's commands.' He said, 'I'll take you back up to the court.' I said, 'Go ahead, but it will be for a testimony against you.' That is when he said to me, 'Baloney'. Then he talked a little while longer and harped on this and that about school and I did not answer him. Then he said, 'I will give you five minutes to get off the street' and I told him five minutes was all I needed, it was about 20 minutes of 9 then. He said, 'I can have you arrested.' I said, 'These other children are out shopping with their parents so why bother me?' He said, 'I have a right to arrest you.' I said, 'Go ahead, arrest me.' He said, 'You will hear from me.' I went off at quarter of 9 and a little way up the street I met Mr. Flint coming across the street. I was talking to Mr. Flint about what Mr. Perkins said, and in the meantime he (Mr. Perkins) sneaked up and butted in the conversation. I introduced the two men, I said, 'Mr. Flint, Mr. Perkins the truant officer.' Then he said to Roger, 'These children can't do this work.' Roger told him they have a constitutional right and a God-given right to do it, and no human has a right to interfere. They talked a little while longer, then I said, 'I'm not going through this any more. We've been through it time and time again. I'm going home and put the little girl to bed.' Then I said 'Goodnight' to both of them and went home."

Before Roger Flint appeared, Perkins when talking to Sarah Prince said, "What is this little girl's name?" The defendant replied, "You know her name, you know all of us." Perkins then said to Betty, "What is your name?" The defendant said, "Tell him to ask your aunt." Sarah Prince then testified that she did not say to Mr. Perkins "Don't tell him"; that she was not trying to evade answering Mr. Perkins, but that because Perkins had been to the house before about the children on flag salute cases, when all the children were present, therefore she had reason to believe he knew the child's name. The defendant testified that the only time prior to December 18, 1941 she and Perkins discussed the matter of children distributing literature was in October of 1940 when he had taken away some of the children's books, that at that time he did not tell her it

was against the law to allow children to distribute or sell literature, that she had never received from him or any [fol. 22] one else any kind of notice, written or oral, about the law until December 18, 1941, and that the first letter she received was dated December 26, 1941. This letter was admitted into evidence and states the law relative to sale or distribution of papers and magazines by children as hereinbefore stated.

She further testified that on December 18, 1941, she had Betty with her at the corner of Legion Parkway and Main Street, Brockton, that she furnished the magazines to Betty and that Betty was going up the street with one hand extended with a magazine in it and she had a bag suspended from her neck on which appeared in print "Watchtower and Consolation, 5¢ a copy". That the defendant had known Mr. Perkins before and that at no time in response to Perkins' question did she give him the name of Betty M. Simmons.

Roger M. Flint was called by the defense, and testified that he was one of Jehovah's Witnesses and as such an ordained minister of Jehovah God. His identification card was admitted into evidence. On December 18, 1941 and at the time of the trial he was company servant of the Brockton Company of Jehovah's Witnesses and had charge of the distribution of literature in Brockton. He gave the literature in question to Sarah Prince in return for her contribution, "a small amount to help cover cost of printing." The money Flint received from contributions received on literature he sent to the Watch Tower Bible & Tract Society, Inc. in Brooklyn, N. Y. where additional literature is printed. He receives no profit from these receipts. Others of Jehovah's Witnesses voluntarily contribute for his support and maintenance. He testified that there is no profit, "It is a Christian work, a charitable work. Jehovah's Witnesses lose much money getting this message to people of good will. God has commanded us to go to the people. At Matthew 24:14 it is written, 'And this gospel of the kingdom shall be preached in all the world for a witness unto all nations; and then shall the end come.' It is our privilege in obedience to the Lord's commandments to faithfully obey him without any profit whatsoever.

The last witness, Henry G. Judson, for the defendant, testified that he was one of Jehovah's Witnesses for thirty-

three years and as such an ordained minister, "spending full time in the Lord's service." His identification card was admitted into evidence. He testified that he was serv- [fol. 23] ing Watch Tower Bible & Tract Society, Inc. in a special capacity, but that for many years he was a zone servant aiding companies of Jehovah's Witnesses; that he had supervised the receipt of contributions and the sending of them to the Watch Tower Bible & Tract Society, that said contributions received on literature was sent by the local companies to the Watch Tower Bible & Tract Society, Inc. where it went into the general fund, which fund is used "to carry forward the work of publishing books, booklets, and the distribution through the countries of the world." The Witness was shown Exhibit "Consolation" in which appeared the following: "5¢ a copy, $1.00 a year, $1.25 in Canada and Foreign Countries." The witness testified that the printing on the "Consolation" magazine "5¢ a copy, $1.00 a year, $1.25 in Canada and Foreign Countries" meant "A person may have received his first copy free or he may have contributed for his first copy. If he saw something there that interested him, for that amount or any more he may care to give, he would receive the Consolation magazine every two weeks." The defendant then rested.

The court on its finding of "Guilty" levied a fine of $25 on the first complaint and $10 on each of the other two complaints. On February 11, 1942 execution was deferred until February 19, 1942 and the defendant's motion to extend the time for filing her bill of exceptions up to and including February 19, 1942 was assented to, filed and allowed. On February 19, 1942 the defendant's motion for stay of execution pending final determination of her bill of exceptions was allowed and her motion for a further extension of the time for filing her bill of exceptions up to and including February 26, 1942, was assented to, filed and allowed.

There was no evidence that any attempt was made by any person to prevent the defendant herself from selling or distributing the magazines, the contention of the Government is that the defendant could not give or distribute the magazines to a minor, as defined in the complaints, for the purpose of having the minor child sell or offer for sale the magazines. That the question at issue is whether there was a violation of the Child Labor Law.

The foregoing statement contains all of the material evidence necessary for a determination of the defendant's [fol. 24] exceptions. The exhibits introduced in evidence are to be transferred with the record to the Supreme Judicial Court. The defendant being aggrieved by the court's opinion, judgment and rulings as hereinbefore stated, brings this bill of Exceptions and prays that it may be allowed.

Respectfully submitted, Alfred A. Albert, Hayden C. Covington.

Assented to: Robert G. Clark Jr., Deputy District Attorney for the Commonwealth of Massachusetts.

ORDER APPROVING BILL OF EXCEPTIONS

Endorsed:

"August 6, 1942 Bill of Exceptions Approved George H. W. Hayes Justice of a Dist Ct presiding in the Superior Court under provisions of Chap 469 Acts of 1923 and Amendatory Acts."

[File endorsement omitted.]

IN DISTRICT COURT OF PLYMOUTH COUNTY

No. 21069

COMPLAINT

To the District Court of Brockton, holden at Brockton, for the transaction of criminal business within the County of Plymouth.

George S. Perkins of Brockton, in said County of Plymouth, in behalf of the Commonwealth of Massachusetts, on the second day of January in the year of our Lord one thousand nine hundred and forty-two on oath complains that.

[fol. 25] Sarah Prince of Brockton, in said County of Plymouth, on the eighteenth day of December in the year of our Lord one thousand nine hundred and forty-one at Brockton in said County of Plymouth, did refuse to give to George S. Perkins, attendance officer of said Brockton,

certain information, to wit: the name and age of Betty M. Simmons, a minor under the age of eighteen years, such information being required for the proper enforcement of the law.

George S. Perkins, Complainant.

PLYMOUTH, ss:

Received and sworn to this second day of January in the year of our Lord one thousand nine hundred and forty-two.

Harry W. Sherburne, Assistant Clerk. (Seal.)

A true Copy. Attest: Harry W. Sherburne, Assistant Clerk of said Court.

IN DISTRICT COURT OF PLYMOUTH COUNTY

No. 21070

COMPLAINT

To the District Court of Brockton, holden at Brockton, for the transaction of criminal business within the County of Plymouth.

George S. Perkins of Brockton, in said County of Plymouth, in behalf of the Commonwealth of Massachusetts, on the second day of January in the year of our Lord one thousand nine hundred and forty-two on oath complains that [fol. 26] Sarah Prince of Brockton, in said County of Plymouth, on the eighteenth day of December in the year of our Lord one thousand nine hundred and forty-one at Brockton in said County of Plymouth, did furnish to one Betty M. Simmons, a girl under the age of eighteen years, certain articles, to wit: magazines, she, the said Sarah Prince well knowing that the said Betty M. Simmons was to sell the said magazines unlawfully.

George S. Perkins, Complainant.

PLYMOUTH, ss:

Received and sworn to this second day of January in the year of our Lord one thousand nine hundred and forty-two Before said Court.

Harry W. Sherburne, Assistant Clerk. (Seal.)

A true Copy. Attest: Harry W. Sherburne, Assistant Clerk of said Court.

IN DISTRICT COURT OF PLYMOUTH COUNTY

COMPLAINT—No. 21071

To the District Court of Brockton, holden at Brockton, for the transaction of criminal business within the County of Plymouth.

George S. Perkins of Brockton, in said County of Plymouth, in behalf of the Commonwealth of Massachusetts, on [fol. 27] the second day of January in the year of our Lord one thousand nine hundred and forty-two on oath complains that

Sarah Prince of Brockton, in said County of Plymouth, on the eighteenth day of December in the year of our Lord one thousand nine hundred and forty-one at Brockton in said County of Plymouth, was the custodian of Betty M. Simmons, a minor, and did permit the said Betty M. Simmons to work contrary to law.

George S. Perkins, Complainant.

PLYMOUTH, ss.

Received and sworn to this second day of January in the year of our Lord one thousand nine hundred and forty-two Before said Court.

Harry W. Sherburne, Assistant Clerk. (Seal.)

A true Copy. Attest: Harry W. Sherburne, Assistant Clerk of said Court.

RECORD OF APPEAL—No. 21069

IN DISTRICT COURT OF PLYMOUTH COUNTY

COMMONWEALTH

VS.

SARAH PRINCE

On Complaint of George S. Perkins for Refusing Information to Attendance Officer (Section 79, Chapter 149).

By Virtue of a Summons, duly issued, upon said complaint, a copy of which complaint is hereto annexed, the said [fol. 28] Defendant is before the District Court of Brockton, at Brockton, in said County of Plymouth, on the fifth

day of January A. D. 1942, and the said complaint is read to her and being asked whether she is guilty of the offense there charged upon her says she is not guilty, and thereupon the further consideration of said complaints is by said court continued to the nineteenth day of January A. D. 1942 at which last mentioned date after hearing divers witnesses duly sworn to testify the truth, the whole truth, and nothing but the truth, and fully understanding the defence of said Defendant, it is considered by said Court that she is guilty of the offence charged against her, it is therefore ordered by the said Court that the Defendant forfeit and pay the sum of twenty-five Dollars to and for the use of the City of Brockton, and that she stands committed until said sentence be complied with.

And said Defendant was thereupon informed of her right to appeal.

From which conviction the said Defendant appeals to the Superior Court next to be holden at Plymouth, within and for the County of Plymouth aforesaid, and is ordered to recognize to the Commonwealth in the sum of $100.00 for her personal appearance before the Superior Court, to be holden at Plymouth, within and for the County of Plymouth, on the first Monday of February next, then and there to prosecute her said appeal, and also in a like manner personally to appear at any subsequent sitting of said Superior Court, to which the case is continued, if not previously surrendered and discharged, and so from time to time, until the final sentence, order or decree of said Superior Court thereon and to abide such final sentence, order or decree, and not depart without leave, and in meantime to keep the peace and be of good behavior, and that she stand committed until this order be complied with.

And the Defendant complies with this order,—

Attest: Harry W. Sherburne, Assistant Clerk of Said Court. (Seal.)

A true copy,—Attest:

Harry W. Sherburne, Assistant Clerk of said Court.

[fol. 29] In District Court of Plymouth County

Record of Appeal—No. 21070

Commonwealth

vs.

Sarah Prince

On complaint of George S. Perkins for furnishing magazines to minor (Section 80, Chapter 149).

By virtue of a summons, duly issued, upon said complaint, a copy of which complaint is hereto annexed, the said Defendant is before the District Court of Brockton, at Brockton, in said County of Plymouth, on the fifth day of January A. D. 1942, and the said complaint is read to her and being asked whether she is guilty of the offence there charged upon her says she is not guilty, and thereupon the further consideration of said complaint is by said court continued from to the nineteenth day of January A. D. 1942 at which last mentioned date after hearing divers witnesses duly sworn to testify the truth, the whole truth, and nothing but the truth, and fully understanding the defence of said Defendant, it is considered by said Court that she is guilty of the offence charged against her, it is therefore ordered by the said Court that the Defendant forfeit and pay the sum of Ten Dollars to and for the use of the City of Brockton, and that she stands committed until said sentence be complied with.

And said Defendant was thereupon informed of her right to appeal.

From which conviction the said Defendant appeals to the Superior Court next to be holden at Plymouth, within and for the County of Plymouth aforesaid, and is ordered to recognize to the Commonwealth in the sum of $100.00 for her personal appearance before the Superior Court, to be holden at Plymouth, within and for the County of Plymouth, on the first Monday of February next, then and there to prosecute her said appeal, and also in a like manner personally to appear at any subsequent sitting of said Superior Court, to which the case is continued, if not previously surrendered and discharged, and so from time to time, until the final sentence, order or decree of said Superior Court

[fol. 30] thereon and to abide such final sentence, order or decree, and not depart without leave, and in meantime to keep the peace and be of good behavior, and that she stand committed until this order be complied with.

And the Defendant complies with this order,—

Attest: Harry W. Sherburne, Assistant Clerk of said Court. (Seal.)

A true copy,—Attest: Harry W. Sherburne, Assistant Clerk of said Court.

In District Court of Plymouth County

Record of Appeal—No. 21071

Commonwealth

vs.

Sarah Prince

On complaint of George S. Perkins for custodian permitting unlawful Work of minor (Section 81, Chapter 149).

By virtue of a summons, duly issued, upon said complaint, a copy of which complaint is hereto annexed, the said Defendant is before the District Court of Brockton, at Brockton, in said County of Plymouth, on the fifth day of January A. D. 1942, and the said complaint is read to her and being asked whether she is guilty of the offence there charged, upon her says she is not guilty, and thereupon the further consideration of said complaint is by said court continued to the Nineteenth day of January A. D. 1942 at which last mentioned date after hearing divers witnesses duly sworn to testify the truth, the whole truth, and nothing but the truth, and fully understanding the defence of said Defendant, it is considered by said Court that she is guilty of the offence charged against her, it is therefore ordered by the said Court that the Defendant forfeit and pay the sum of Ten Dollars to and for the use of the City of Brock-[fol. 31] ton, and that she stands committed until said sentence be complied with.

And said Defendant was thereupon informed of her right to appeal.

From which conviction the said Defendant appeals to the Superior Court next to be holden at Plymouth, within

and for the County of Plymouth aforesaid, and is ordered to recognize to the Commonwealth in the sum of $100.00 for her personal appearance before the Superior Court, to be holden at Plymouth, within and for the County of Plymouth, on the first Monday of February next, then and there to prosecute her said appeal, and also in a like manner personally to appear at any subsequent sitting of said Superior Court, to which the case is continued, if not previously surrendered and discharged, and so from time to time, until the final sentence, order or decree of said Superior Court thereon and to abide such final sentence, order or decree, and not depart without leave, and in meantime to keep the peace and be of good behavior, and that she stand committed until this order be complied with.

And the Defendant complies with this order,—

Attest: Harry W. Sherburne, Assistant Clerk of said Court. (Seal.)

A true copy,—Attest: Harry W. Sherburne, Assistant Clerk of said Court.

IN SUPERIOR COURT OF PLYMOUTH COUNTY

DEFENDANT'S MOTIONS TO DISMISS AND/OR QUASH—Filed February 10, 1942

(THREE CASES)

And now comes the defendant in the above-entitled action and moves that the same be dismissed and/or quashed and assigns for cause the following:

1. That the complaints are invalid and do not state facts sufficient to constitute offenses under the law.

[fol. 32] 2. That General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, are invalid and void on their face and also as construed and applied in this case by reason that they operate so as to violate the First Amendment to the Constitution of the United States for they place unreasonable restraints upon the Freedom of Speech, the Freedom of Press, and the Freedom of Worship of both the defendant and the minor child and thus violate the due process of law clause of the Fourteenth Amendment to the Constitution of the United States.

3. That General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, are invalid and void on their face and also as construed and applied in this case by reason that they operate so as to violate the Fourteenth Amendment to the Constitution of the United States, which Amendment had the effect of making said First Amendment applicable to the States, as they place unreasonable restraint upon the Freedom of Speech, the Freedom of Press, and the Freedom of Worship both as to the defendant and the minor child and thus are violative of the Due Process of Law Clause of the Fourteenth Amendment to the Constitution of the United States.

4. That General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, are invalid and void on their face and also as construed and applied in this case by reason that they operate so as to violate the Equal Protection of the Laws Clause of the Fourteenth Amendment to the Constitution of the United States in that they place unreasonable restraints on the exercise of Free Speech, Free Press, and Free Worship for they place children and minors under a certain age in an unreasonable classification.

5. That General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, are invalid and void on their face and also as construed and applied in this case by reason that they deprive children under certain ages of the privileges and immunities of citizens of the United States contrary to the Fourteenth Amendment to the Constitution of the United States in that minor children under the ages as prescribed in the various sections are denied the unencumbered right of pursuing an occupation or calling, which occupation or calling is granted unencumbered to those who are above the ages as prescribed in the statutes.

[fol. 33] 6. With particular reference to General Laws Ter. Ed. Chapter 149 Section 79, said section is unconstitutional on its face and also as construed and applied in this case by reason that it punishes for failure to give evidence against one's self contrary to the Fifth Amendment to the Constitution of the United States.

7. That General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, cannot be applied to the facts in this case and therefore the defendant is Not Guilty on all complaints.

8. That there is insufficient evidence to warrant a finding of Guilty on any of the Complaints and therefore the defendant is Not Guilty on all the Complaints.

By Her Attorneys, Alfred A. Albert, Hayden Covington.

Endorsed: "Filed Feb. 10, 1942. L. Francis Callan, Jr. *Ass't. Clerk.*" "Feb. 10, 1942. (Hayes, J.) Motion denied. Deft's exceptions saved. L. Francis Callan, Jr., *Ass't Clerk.*

IN SUPERIOR COURT OF PLYMOUTH COUNTY

DEFENDANT'S MOTION FOR DIRECTED FINDING—Filed February 11, 1942

(Three Cases)

And now comes the defendant in the above entitled action and moves that the Court direct a finding in her favor on all three complaints, and assigns for cause thereof the following:

1. That the complaints are invalid and do not state facts sufficient to constitute offenses under the law.

2. That General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, are invalid and void on their face and also as construed and applied in this case by reason [fol. 34] that they operate so as to violate the First Amendment to the Constitution of the United States for they place unreasonable restraints upon the Freedom of Speech, the Freedom of Press, and the Freedom of Worship of both the defendant and the minor child and thus violate the due process of law clause of the Fourteenth Amendment to the Constitution of the United States.

3. That General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, are invalid and void on their face and also as construed and applied in this case by reason that they operate so as to violate the Fourteenth Amendment to the Constitution of the United States, which Amendment had the effect of making said First Amendment applicable to the States, as they place unreasonable restraints

upon the Freedom of Speech, the Freedom of Press, and the Freedom of Worship both as to the defendant and the minor child and thus are violative of the Due Process of Law Clause of the Fourteenth Amendment to the Constitution of the United States.

4. That Geenral Laws Ter Ed. Chapter 149 Sections 60 through 83, as amended, are invalid and void on their face and also as construed and applied in this case by reason that they operate so as to violate the Equal Protection of the Laws Clause of the Fourteenth Amendment to the Constitution of the United States in that they place unreasonable restraints on the exercise of Free Speech, Free Press, and Free Worship for they place children and minors under a certain age in an unreasonable classification.

5. That General Laws Ter. Ed. chapter 149 Sections 60 through 83, as amended, are invalid and void on their face and also as construed and applied in this case by reason that they deprive children under certain ages of the privileges and immunities of citizens of the United States contrary to the Fourteenth Amendment to the Constitution of the United States in that minor children under the ages as prescribed in the various sections are denied the unencumbered right of pursuing an occupation or calling, which occupation or calling is granted unencumbered to those who are above the ages as prescribed in the statutes.

6. With particular reference to General Laws Ter. Ed. Chapter 149 Section 79, said section is unconstitutional on [fol. 35] its face and also as construed and applied in this case by reason that it punishes for failure to give evidence against one's self contrary to the Fifth Amendment to the Constitution of the United States.

7. That General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, cannot be applied to the facts in this case and therefore the defendant is Not Guilty on all complaints.

8. That there is insufficient evidence to warrant a finding of Guilty on any of the Complaints and therefore the defendant is Not Guilty on all the Complaints.

9. That upon all the evidence and the law taken in the most unfavorable light to the defendant, there is insufficient

evidence to warrant her conviction on any of the complaints.

By Her Attorneys, Alfred A. Albert, Hayden Covington.

Endorsed: "Filed Feb. 11, 1942. L. Francis Callan, Jr., *Ass't. Clerk.*" "Feb 11 1942 Motion denied and Exceptions noted Geo H W Hayes Justice of a Dist Ct presiding in Superior Ct under provisions of Acts 1923 Chap 469 and Amendatory Acts".

IN SUPERIOR COURT OF PLYMOUTH COUNTY

DEFENDANT'S REQUESTS FOR RULINGS—Filed February 11, 1942

(Three Cases)

And now comes the defendant in the above entitled cases and makes the following requests for rulings:

1. That upon all the evidence the defendant is Not Guilty.

2. That upon all the law the defendant is Not Guilty.

[fol. 36] 3. That upon all the evidence the Court must find that the cause of the defendant's arrest were the acts of the defendant and the minor child involved in engaging in their way of worship.

4. If the court finds that the cause of the defendant's arrest were the acts of the defendant and the minor child in that they were engaging in their way of worship, then the Court must rule that General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, do not apply to this defendant as the court should not impute to any legislation a purpose of action against religion.

Holy Trinity Church v. U. S., 143 U. S. 457.

5. That there is insufficient evidence to warrant a finding that the defendant was to receive or derive any compensation, remuneration or pecuniary benefit or profit from the furnishing of magazines or other literature to the minor child.

6. If the Court should find that there is insufficient evidence to warant a finding that the defendant was to receive

or derive any compensation, remuneration or pecuniary benefit or profit from the furnishing of magazines or other literature to the minor child, then the Court must find the defendant Not Guilty.

7. That upon all the evidence the Court must find that the defendant did not furnish magazines or other literature to the minor child for the purpose of having said minor child sell said magazines or other literature.

8. If the Court finds that the defendant did not furnish magazines or other literature to said minor child for the purpose of having said minor child sell said magazines or other literature, then the Court must find the defendant Not Guilty.

9. If upon all the evidence the Court should find that the defendant did furnish to Betty M. Simmons magazines or other literature for the purpose of having said Betty M. Simmons sell said magazines or other literature contrary to the law, then the Court must find the defendant Not Guilty as it is immaterial whether said Betty M. Simmons was to sell, distribute freely or receive contributions for said magazines or other literature.

[fol. 37] Lovell v. Griffin, 303 U. S. 444.

Hannon v. Haverhill, 100 Fed. (2) 82.

10. That there is insufficient evidence to warrant a finding that the defendant knew that the minor child, Betty M. Simmons, intended to sell magazines or other literature unlawfully.

11. If the Court should find that the defendant did not furnish Betty M. Simmons magazines or other literature knowing that said Betty M. Simmons intended to sell the same unlawfully, then the Court must find the defendant Not Guilty of the violation of General Laws Ter. Ed. Chapter 149 Section 80.

12. That there is insufficient evidence to warrant a conviction under General Laws Ter. Ed. Chapter 149 Section 79, and there is insufficient evidence to warrant a conviction under General Laws Ter. Ed. Chapter 149 Section 81.

13. That upon all the evidence and the law the Court must find that General Laws Ter. Ed. Chapter 149 Sections 60 through 83, as amended, are invalid and void on their

face and also as construed and applied in this case because they operate to deprive the defendant and the minor child of their rights of Free Speech, Free Press and Free Worship in contravention of the Due Process, the Equal Protection of the Laws and the Privilege and Immunities Clauses of the Fourteenth Amendment to the Constitution of the United States.

By Her Attorneys, Alfred A. Albert, Hayden Covington.

[File endorsement omitted.]

[fol. 38] In Superior Court of Plymouth County

Docket Entries

No. 21069. No. 21070. No. 21071

Date No.

1942

Feb. 2nd (1) Entered.

Feb. 10th (2) Defendant waives jury trial.

Feb. 10th (3) Defendant's motions to dismiss or quash filed and denied. Defendant's exceptions noted.

Feb. 11th (4) Defendant's motion for directed finding filed and denied. Defendant's exceptions saved.

Feb. 11th (5) Defendant's request for rulings filed.

Feb. 11th (6) Finding of guilty, (Hayes, J.) Defendant's exceptions saved.

Feb. 11th (7) Fine, $25.00, sentence suspended to February 19, 1942 (#21069).

Fine, $10.00, sentence suspended to February 19, 1942. (#21070-71).

Feb. 11th (8) Ordered to recognize personally in sum of $100.00.

Feb. 11th (9) Did so recognize personally in sum of $100.00.

Feb. 11th (10) Defendant's motion to extend time for filing bill of exceptions filed and allowed, (Hayes, J.)

Feb. 19th (11) Defendant's motion to extend time for filing bill of exceptions filed and allowed, (Hayes, J.)

Feb. 19th (12) Defendant's motion for stay of execution filed and allowed, (Hayes, J.)

Feb. 19th (13) Execution of sentence stayed.

Feb. 19th (14) Ordered to recognize in sum of $100.00, with surety, pending appeal.

Feb. 19th (15) Did so recognize in total sum of $300.00 with Helen A. White, Surety.

[fol. 39] Feb. 24th (16) Defendant's bill of exceptions filed.

Feb. 27th (17) Court certificate of reasonable doubt.

Feb. 27th (18) Allowance of motion for stay of execution revoked. Sentence suspended until June 16, 1942, (Hayes, J.) Notice sent.

Feb. 27th (19) Bill of exceptions disallowed, (Hayes, J.) Notice sent.

Mar. 20th (20) Defendant's motion to vacate order disallowing bill of exceptions and for a hearing on the bill of exceptions filed. Notice sent.

Mar. 30th (21) Defendant's motion to vacate order disallowing bill of exceptions and for a hearing on the bill of exceptions allowed, (Hayes, J.)

Mar. 30th (22) Defendant's motion to vacate order suspending sentence and for further stay of execution filed and allowed, (Hayes, J.)

Aug. 6th (23) Defendant's substitute bill of exceptions filed and approved, (Hayes, J.)

True copies. Attest:

L. Francis Callan, Jr., Ass't Clerk.

[fol. 40] In Superior Court of Plymouth County

Commonwealth of Massachusetts

(Three Cases) No. 21069 Cr. No. 21070 Cr. No. 21071 Cr.

Commonwealth of Massachusetts

vs.

Sarah Prince

Rescript from the Supreme Judicial Court for the Commonwealth—Filed February 17, 1943

No. 9726. Supreme Judicial Court for the Commonwealth
Q At Boston, Feb. 15, 1943

In the case of Commonwealth vs. Sarah Prince, pending in the Superior Court for the County of Plymouth

Ordered, that the clerk of said court in said county make the following entry under said case in the docket of said court; viz.,—

Defendant's exceptions sustained in the first case (under Sec. 79) and overruled in the other cases.

By the Court, Walter F. Frederick, Clerk.

February 15, 1943.
See opinion on file.

[File endorsement omitted.]

[fol. 40a] In Supreme Judicial Court of Massachusetts

Opinion

Qua, J.:

There was evidence tending to show the following: On the evening of the day named in each of these three complaints the defendant was on a public street in Brockton with her niece, one Betty M. Simmons, a girl in her ninth year, of whom the defendant was the custodian. Both the defendant and the child belonged to a religious sect known as "Jehovah's Witnesses" and as such regarded themselves as "ordained ministers" of God. Betty carried a "magazine bag" on which was printed "Watchtower ex-

plains the Theocratic Government" "5¢ a copy." In the bag were copies of the religious publications "Watchtower" and "Consolation." Betty held up a copy of each in her hand. She testified that she was "taking contributions" of five cents for each magazine, or more "if people should give more"; that she was not selling them; that on that night she did not receive any contributions or give any magazines away; that when she received "contributions" she gave all the money to the defendant; and that the defendant had given her the bag and the magazines. The defendant admitted at the trial that she had given Betty the bag and the magazines and testified that she told Betty "where to stand."

There was further testimony by the defendant and witnesses called by her to the effect that a person interested could obtain a copy of a magazine without paying the five cents; that the enterprise of distributing the magazines was not carried on for profit but was a religious and charitable enterprise; and that she and her children were on the street corner for no other reason "but to tell the people of the one place of safety, that is in the kingdom of God under Christ that we have prayed for."

[fol. 40b] There was also evidence from which it could have been found that on the evening in question the defendant, when asked by the supervisor of attendance to give him Betty's name, refused to do so, although she knew he was such officer and that he desired the name to aid in the enforcement of the law. There was evidence that the supervisor insisted that he did not already know Betty's name; that during the interview he said that he had a right to arrest the defendant; and there was evidence that on a previous occasion he had explained to her that it was against the law to allow children on the street selling magazines.

General Laws (Ter. Ed.) c. 149, § 69, as amended by St. 1939, c. 461, § 7, provides in part that "No boy under twelve and no girl under eighteen shall sell, expose or offer for sale any newspapers, magazines, periodicals or any other articles of merchandise of any description, or exercise the trade of bootblack or scavenger, or any other trade, in any street or public place." Section 77 provides that §§ 69 to 73 shall be enforced by supervisors of attendance and police officers and vests the former with "full police powers for the purpose." Section 79 provides in

part that any person "who refuses to give" to a supervisor of attendance "such information as may be required for the proper enforcement of sections sixty to seventy-four, inclusive, shall be punished * * *." Section 80 provides that "Whoever furnishes * * * to any minor any article of any description with the knowledge that the minor intends to sell such article in violation of any provision of sections sixty-nine to seventy-three, inclusive * * * shall be punished * * *." Section 81 provides that "Any * * * custodian having a minor under his con-
[fol. 40c] trol who * * * permits such minor to work in violation of any provision of sections sixty to seventy-four, inclusive * * * shall * * * be punished * * *."

One Perkins, supervisor of attendance of the schools of Brockton, made these three complaints against the defendant charging respectively that on December 18, 1941, at Brockton the defendant (first complaint, for violation of § 79) "did refuse to give to George S. Perkins, attendance officer of said Brockton, certain information, to wit: the name and age of Betty M. Simmons, a minor under the age of eighteen years, such information being required for the proper enforcement of the law"; (second complaint, for violation of § 80) "did furnish to one Betty M. Simmons, a girl under the age of eighteen years, certain articles, to wit: magazines, she, the said Sarah Prince well knowing that the said Betty M. Simmons was to sell the said magazines unlawfully"; and (third complaint, for violation of § 81) "was the custodian of Betty M. Simmons, a minor, and did permit the said Betty M. Simmons to work contrary to law." Upon appeal to the Superior Court the complaints were tried by a judge without a jury, who found the defendant guilty on all three complaints.

The questions presented in various forms by the defendant's exceptions and argued before us are whether there was any evidence to warrant the findings that the defendant had violated the statutes as charged, and whether on their face, or as applied in these cases to the facts that could warrantably be found, the statutes underlying the three complaints are unconstitutional.

The defendant's contention that the statutes involved do not apply to her activities and those of Betty rests in gen-
[fol. 40d] eral upon the argument that these statutes were aimed at the regulation of street trades of well known types commonly carried on by children for money, and that they

were not intended to regulate the distribution without profit of religious publications by those who regard the spreading of their beliefs in this way as a command of God and hence as a religious and moral duty. We are not convinced that this contention is sound. By way of caution we must remember that the trial judge might not have accepted as wholly true the testimony of the defendant and her witnesses as to their religious beliefs or as to the philanthropic character of their undertaking. But if he accepted it in full, we still think a finding was warranted that the law had been violated. It is no doubt true in a broad sense that the statutes were directed at the regulation of certain ordinary street trades. But this will not justify us in excluding from their operation acts that come within their literal terms and that may involve the very evils intended to be curbed. To do this would be to rewrite the statutes and to insert in them exceptions which the Legislature could have inserted if it had desired that such exceptions should exist. The acts of the defendant could well be found to fall within the literal terms of the statutes and within the allegations of the complaints. Section 69, as amended, contains no exception as to religious magazines. Its words are "any newspapers, magazines, periodicals or any other articles of merchandise of any description." The judge could find that if a passerby should hand over five cents in accordance with the sign on the bag and should receive a magazine in return, a sale would be effected. The judge was not required to accept the defendant's characterization of that transaction as a "contribution." [fol. 40e] He could believe that selling the literature played a more prominent part in the enterprise than giving it away. He could find that the defendant furnished the magazines to Betty, knowing that the latter intended to sell them, if she could, in violation of § 69. There is nothing in that section that restricts its scope to selling with an ultimate net profit in view. There is nothing in any of the sections on which these complaints rest that requires an employment of the minor, in the sense in which the word employment is used in the law of master and servant, as a condition of criminal responsibility. The judge could find that the defendant permitted Betty to "work" in violation of § 81. The "work" mentioned in § 81, in so far as that section refers to § 69, is the selling, exposing or offering for sale prohibited by § 69, whether or not that is carried on under

a technical employment or for a wage. And, finally, we cannot say that the evils at which the statutes were directed attendant upon the selling by children of newspapers, magazines, periodicals, and other merchandise in streets and public places do not exist where the publications are of a religious nature. It seems apparent that they may or may not exist in particular instances according to the circumstances just as they may or may not exist in particular instances according to the circumstances where the selling is of publications of a secular nature. The defendant has called to our attention a number of decisions holding that variously worded statutes relating to peddlers and other vendors were not intended to apply to the activities of "Jehovah's Witnesses." Perhaps of these cases the one nearest to the present case is *State* v. *Richardson*, 27 Atl. [fol. 40f] (2d) 94 (N. H. 1942). But we cannot regard any of them as decisive of the true construction of our own statutes.

We are of opinion that these statutes as here construed do not infringe upon the constitutional guaranties of freedom of the press and of religion. Under our constitutional system freedom of the press and freedom of religion are rightly accorded a highly preferred position in the struggle of competing interests, but it does not follow that the channels through which these freedoms are exercised may not be affected and regulated in some degree by enactments under the constitutional powers of government designed to promote the public health, safety or welfare. The statutes under which these prosecutions are brought are derived from sections first enacted as part of St. 1913, c. 831. That statute was entitled "An Act to Regulate the Labor of Minors." Its title correctly indicates its content. It contains many sections obviously intended to protect children against hazardous occupations, to insure that they shall not be permitted to work in particular trades or processes or at hours considered detrimental to the health or morals of minors of various ages, and to secure proper school attendance. Certain sections are devoted to "Street Trades." These provisions belong to a type of legislation long regarded as within the duty of the State to protect the health, morals, and welfare of its people. *Commonwealth* v. *Hamilton Manuf. Co.*, 120 Mass. 383. *Commonwealth* v. *Riley*, 210 Mass. 387, affirmed, *Riley* v. *Massachusetts*, 232 U. S. 671.

Commonwealth v. *John T. Connor Co.*, 222 Mass. 299. *Muller* v. *Oregon*, 208 U. S. 412. There have been examples of such legislation in this Commonwealth for a century. [fol. 40g] See St. 1842, c. 60. We think that freedom of the press and of religion is subject to incidental regulation to the slight degree involved in the prohibition of the selling of religious literature in streets and public places by boys under twelve and girls under eighteen and in the further statutory provisions herein considered, which have been adopted as means of enforcing that prohibition. These cases are within the principle of such recent decisions as *Commonwealth* v. *Pascone*, 308 Mass. 591, 594-598, certiorari denied, 314 U. S. 641; *Cox* v. *New Hampshire*, 312 U. S. 569; *Valentine* v. *Chrestensen*, 316 U. S. 52; *Manchester* v. *Leiby*, 117 Fed. (2d) 661, certiorari denied, 313 U. S. 562; and *Busey* v. *District of Columbia*, 129 Fed. (2d) 24. Moreover, it would seem that the statutes as applied in the cases now before us are constitutional under all the opinions in *Jones* v. *Opelika*, 215 U. S. 584. The cases of *Lovell* v. *Griffin*, 303 U. S. 444, *Hague* v. *Committee for Industrial Organization*, 307 U. S. 496, *Schneider* v. *State*, 308 U. S. 147, and *Cantwell* v. *Connecticut*, 310 U. S. 296, upon which the defendant relies; seem to us distinguishable.

The defendant makes the further contention as to the first complaint (for refusing to give the attendance officer the name and age of Betty Simmons) that she is now to be punished for refusing to furnish evidence against herself. This contention requires examination. Article 12 of the Declaration of Rights of the Commonwealth provides in part that "No subject shall be held to answer for any crimes or offence, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself." In *Emery's Case*, 107 Mass. 172, at page 182, Mr. Justice Wells, speaking with [fol. 40h] the approval of all members of this court, said that the clause "or furnish evidence against himself" "may be presumed to be intended to add something to the significance of that which precedes." He continued, "Aside from this consideration, and upon the language of the proposition standing by itself, it is a reasonable construction to hold that it protects a person from being compelled to disclose the circumstances of his offence, the sources from which, or the means by which evidence of its commission, or of his connection with it, may be obtained,

or made effectual for his conviction, without using his answers as direct admissions against him. For all practical purposes, such disclosures would have the effect to furnish evidence against the party making them. They might furnish the only means of discovering the names of those who could give evidence concerning the transactions, the instrument by which a crime was perpetrated, or even the *corpus delicti* itself." He added that "Both the reason upon which the rule is founded, and the terms in which it is expressed, forbid that it should be limited to confessions of guilt, or statements which may be proved, in susbequent prosecutions, as admissions of facts sought to be established therein." There was no evidence that the defendant was asked Betty's age. Plainly her conviction on the first complaint was based solely upon her refusal to disclose Betty's name. It might be argued that Betty's name in itself had no tendency to incriminate the defendant, and was not an element of proof in the prosecution against her. On the other hand, the course of the evidence at the trial, including Betty's own testimony, made it clear that she was a witness who could, if the defendant were guilty, testify to every [fol. 40i] single element of proof necessary to convict the defendant on the second and third complaints. Moreover, by the terms of the statute upon which the first complaint is based the right of the supervisor of attendance to compel the defendant to answer his question was predicated upon the assumption that the answer was "required for the proper enforcement of sections sixty to seventy-four, inclusive." Under the circumstances of this case an answer to the question would have furnished to the Commonwealth ready means for producing all the evidence required to convict the defendant upon the second and third complaints. The supervisor of attendance was in effect asking the defendant to help him secure the Commonwealth's principal witness in order to prosecute the defendant. If the defendant can be convicted for not answering such a question, why could not a statute be enacted in effect requiring every person suspected of crime to furnish the police a list of all the witnesses whose testimony would convict him? We do not see how we can uphold the present conviction on the first complaint without overturning the construction of the Constitution given after careful consideration in *Emery's case*. We are not ready to take that step. *People* v. *Argo*, 237 Ill. 173. *People* v. *Spain*, 307 Ill. 283, 291. *People* v.

Newmark, 312 Ill. 625, 632. *State* v. *Farmer*, 46 N. H. 200, 202. *Counselman* v. *Hitchcock*, 142 U. S. 547, 585.

The result here reached under the circumstances of this case does not mean that a witness can refuse to testify to every fact, harmless in itself, which by any possibility might in the course of further investigation lead to the discovery of other facts and so finally to the unearthing of some evidence having a tendency to incriminate him. This [fol. 40j] decision rests upon the facts of this case and upon the direct connection between the question asked and the securing of the evidence required to convict upon the second and third complaints, so that here if the defendant had answered it could truly have been said that she herself had helped to furnish the incriminating evidence.

It does not necessarily follow from what has been said that the duty of keeping records of, or of disclosing, certain specified acts, or of disclosing the mere identity of the actor or of the instrumentality employed by him, imposed by certain statutes upon persons engaged in certain occupations or persons accepting licenses or others, where the duty is not dependent upon any criminal quality in the facts required to be recorded or disclosed, violates the Constitution. Thus statutes imposing a penalty upon the driver of a motor vehicle who goes away after an accident without making known his name and the number of his vehicle (see G. L. (Ter. Ed.) c. 90, § 24, as amended) have been held not to require self incrimination. *Ule* v. *State*, 208 Ind. 255. *Ex parte Knoedler*, 243 Mo. 632. *State* v. *Sterrin*, 78 N. H. 220. *People* v. *Rosenheimer*, 209 N. Y. 115. See *Commonwealth* v. *Horsfall*, 213 Mass. 232; *Opinion of the Justices*, 271 Mass. 582, 595-596; *United States* v. *Sullivan*, 274 U. S. 259; *United States* v. *Mulligan*, 268 Fed. 893. It would be impracticable to attempt at this time a full discussion of the possible distinctions. The subject is treated at large in Wigmore on Evidence (3d ed.) §§ 2259c, 2259d.

The result is that the defendant's exceptions are sustained in the first case (under § 79) and are overruled in the other cases.

So ordered.

[fols. 40k-42] COMMONWEALTH OF MASSACHUSETTS

Boston, May 27, 1943.

I certify the annexed to be a true copy of the opinion of the Supreme Judicial Court in the case of Commonwealth vs. Sarah Prince decided on the fifteenth day of February, 1943.

(S.) Ethelbert V. Grabill, Reporter of Decisions.

Endorsed: "Filed in Superior Court for the County of Plymouth May 28 1943. George C. P. Olsson, Clerk."

[fol. 43] IN SUPERIOR COURT OF PLYMOUTH COUNTY

(Two Cases) No. 21070 Cr. No. 21071 Cr.

SARAH PRINCE, Appellant

vs.

COMMONWEALTH OF MASSACHUSETTS, Appellee

PETITION FOR APPEALS, STATEMENT, ASSIGNMENTS OF ERROR AND PRAYER FOR REVERSAL.—Filed May 17, 1943

PETITION FOR APPEALS

Being aggrieved by the final decision and opinion of the Supreme Judicial Court of the Commonwealth of Massachusetts, and the judgments of the courts below, in the above entitled causes, appellant herein prays that appeals be allowed to the Supreme Court of the United States herein, and for an order fixing the amount of the bond thereon.

STATEMENT

In these cases the validity of statutes of the Commonwealth of Massachusetts are called in question as being unconstitutionally construed and applied to the facts and circumstances of these cases. The statutes read:

"(Massachusetts General Laws, Chapter 149, Section 80:) Penalty for Furnishing Articles to be Illegally Sold by Minors Engaged in Street Trades, or Aiding in Violation of Sections 69-73.—Whoever furnishes or sells to any

minor any article of any description with the knowledge that the minor intends to sell such articles in violation of any provision of sections sixty-nine to seventy-three, inclu- [fol. 44] sive, or after having received written notice to this effect from any officer charged with the enforcement thereof, or knowingly procures or encourages any minor to violate any provisions of said sections, shall be punished by a fine of not less than ten nor more than two hundred dollars or by imprisonment for not more than two months, or both. (1913, 831, sec. 22.)

"(Section 81:) Penalty on Parent or Guardian, etc.—Any parent, guardian or custodian having a minor under his control who compels or permits such minor to work in violation of any provision of section sixty to seventy-four, inclusive, or knowingly certifies to any materially false statement for the purpose of obtaining the illegal employment of such minor, shall for a first offense be punished by a fine of not less than two nor more than ten dollars or by imprisonment for not more than five days, or both; and for a subsequent offense by a fine of not less than five nor more than twenty-five dollars or by imprisonment for not more than ten days, or both (1913, 831, sec. 23.)"

These statutes were duly passed and approved by the Legislature of the Commonwealth of Massachusetts, and are here drawn in question upon the ground that said statutes are repugnant to the First and Fourteenth Amendments to the United States Constitution. The Supreme Judicial Court of the Commonwealth of Massachusetts is the court of last resort in this cause in the Commonwealth of Massachusetts in which a decision could be had and the decision of that court is in favor of the validity of the said statute. Therefore, in accordance with the rules of the Supreme Court of the United States (Rule 46, paragraph 2 (28 U. S. C. s 354)), appellant respectfully shows this Court that the case is one in which under the legislation in force when the Act of January 31, 1928 (45 Stat. L. 54) was passed, to wit, [fol. 45] under Section 237 (a) of the Judicial Code (28 U. S. C. s344), a review could be had in the Supreme Court of the United States on a writ of error as a matter of right.

This cause came before the Supreme Judicial Court of Massachusetts on a Consolidated Bill of Exceptions arising out of the conviction of the appellant in the Plymouth Superior Court under three separate complaints, each charg-

ing a violation of one of the three sections of Chapter 149, Sections 79, 80 and 81 of the General Laws of Massachusetts. On February 15, 1943, the Supreme Judicial Court of Massachusetts rendered its decision and opinion herein, which decision sustained appellant's exceptions under the first complaint but overruled appellant's exceptions under the second and third, which latter two complaints are here involved. The opinion of the court has been officially reported and appears in the record in its entirety. (1943 Mass. Adv. Sheets 233.)

The orders overruling appellant's exceptions under the second and third complaints were entered in the office of the Clerk of Courts, Superior Court, County of Plymouth Commonwealth of Massachusetts on February 17, 1943.

Assignments of Error

Now comes the appellant in the above entitled causes and files herewith, together with said petitions for appeals, these assignments of error, and says that these are errors committed by the courts below in the records and proceedings of the above entitled causes and for the purpose of having the same reviewed by the United States Supreme Court makes the following assignments:

[fol. 46] (1) The Supreme Judicial Court of the Commonwealth of Massachusetts erred in overruling appellant's exceptions under the second and third complaints herein because the statutes as construed and applied abridge and deny appellant's rights of freedom to bring up children in the nurture and admonition of the Lord and to direct the spiritual welfare of said children and their proper worship of Almighty God Jehovah as directed in His Word, contrary to the First and Fourteenth Amendments to the United States Constitution.

(2) The Supreme Judicial Court of the Commonwealth of Massachusetts erred in overruling appellant's exceptions under the second and third complaints herein because the statutes as construed and applied abridge and deny appellant's and her minor ward's freedom of speech, press, and worship of Almighty God Jehovah, contrary to the First and Fourteenth Amendments to the United States Constitution.

(3) The Supreme Judicial Court of the Commonwealth of Massachusetts erred in failing to reverse the judgment

of the Superior Court of Plymouth County, because that court should have sustained appellant's motion to dismiss and/or quash the complaints.

(4) The Supreme Judicial Court of the Commonwealth of Massachusetts erred in failing to reverse the judgment of the Superior Court for Plymouth County, because that court should have sustained the appellant's motions for directed findings filed at the close of Commonwealth's evidence.

(5) The Supreme Judicial Court of the Commonwealth of Massachusetts erred in failing to reverse the judgment of the Superior Court for Plymouth County, because that court should have sustained appellant's motions for requested rulings filed at the close of all the evidence.

[fols. 47-85] PRAYER FOR REVERSAL

For and on account of the above errors appellant prays that the said findings and opinion of the Supreme Judicial Court of the Commonwealth of Massachusetts and final judgment of the Superior Court, Plymouth County, Commonwealth of Massachusetts, hereinabove described in the above entitled causes be reviewed by the Supreme Court of the United States and reversed, and judgments rendered in favor of the appellant and for costs.

Alfred A. Albert, Hayden C. Covington. (S.) Alfred A. Albert by Hayden C. Covington, Attorneys for Appellant.

[File endorsement omitted.]

[fol. 86] IN SUPERIOR COURT OF PLYMOUTH COUNTY

ORDER ALLOWING APPEAL

The appellant in the above entitled causes, having prayed for the allowance of appeals in these causes to the Supreme Court of the United States from the judgments made and entered in the above entitled causes by the Superior Court, Plymouth County of the Commonwealth of Massachusetts on the eleventh day of February 1942 (which judgments now stand affirmed by virtue of the overruling of her exceptions by the Supreme Judicial Court of the Common-

wealth of Massachusetts on February 17, 1943) and from each and every part thereof, and having presented and filed her petitions for appeals, assignment of errors, prayer for reversal and statement as to jurisdiction pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided:

It is now ordered that appeals be and the same are hereby allowed to the Supreme Court of the United States from the Superior Court of Plymouth County Commonwealth of Massachusetts in the above entitled causes, as provided by law, and

It is further ordered that the Clerk of Courts, Superior Court, County of Plymouth, Commonwealth of Massachusetts shall prepare and certify to the transcript of the record, proceedings and judgments of these causes and transmit the same to the Clerk of the Supreme Court of the United States, together with all exhibits in original form as designated by pra-cipe filed with him, so that he shall have same in said Court within twenty (20) days from date, and

[fols. 87-93] It is further ordered that security for cost of appeals be affixed in the sum of five hundred ($500) dollars.

(S.) John P. Higgins, Chief Justice Superior Court of the Commonwealth of Massachusetts.

Dated, May 15, 1943.

[Endorsed:] "Filed in Superior Court for the County of Plymouth May 17, 1943, George C. P. Olsson, Clerk."

[fol. 94] In Superior Court of Plymouth County

Praecipe for Transcript of the Record—Filed May 17, 1943

To Honorable George C. P. Olsson, Clerk of Courts, Superior Court, County of Plymouth, Commonwealth of Massachusetts:

You will please prepare an authentic copy of the entire record filed in the above entitled causes, being in your court No. 21070 and No. 21071 of the Superior Court for Plymouth

County and No. 9726 of the Supreme Judicial Court of Massachusetts, for the purpose of filing appeals with the Clerk of the Supreme Court of the United States. The [fol. 95] records should contain the following documents:

1. All proceedings had in the Superior Court for Plymouth County, and the Supreme Judicial Court of Massachusetts, including all opinions herein.

2. Petitions for allowance of appeals to the Supreme Court of the United States, Statement, Assignments of Error and Prayer for Reversal.

3. Jurisdictional Statement.

4. Order allowing appeal to the Supreme Court of the United States.

5. Statement of points to be relied upon in the Supreme Court of the United States.

6. Citation, signed by the Chief Justice of the Superior Court of the Commonwealth of Massachusetts.

7. Bond for costs on appeals to the Supreme Court of the United States.

8. Notice calling appellee's attention to paragraph 3 of Rule 12 of Rules of the Supreme Court of the United States.

9. This praecipe for transcript of the record.

10. All exhibits to be included by reference to the original documents.

Alfred A. Albert, Hayden C. Covington, by (S.) Alfred A. Albert, Hayden C. Covington, Attorneys for Appellant.

[File endorsement omitted.]

[fol. 96] In Superior Court of Plymouth County

Acknowledgment of Service—Filed May 18, 1943

On behalf of the appellee in the above entitled causes, service is hereby acknowledged of copies of the record containing copies of the following documents, to wit:

1. Petitions for allowance of appeals to the Supreme Court of the United States, Statement, Assignments of Error and Prayer for Reversal.

2. Jurisdictional statement.

3. Order allowing appeals to the Supreme Court of the United States.

4. Statement of points to be relied upon in the Supreme Court of the United States.

5. Praecipe for transcript of the Record.

6. Citation, signed by the Superior Court of the Commonwealth of Massachusetts.

7. Bond for costs on appeals to the Supreme Court of the United States.

8. Notice calling appellee's attention to paragraph 3 of Rule 12 of Rules of the Supreme Court of the United States Dated, May 17, 1943.

The Attorney General of the Commonwealth of Massachusetts, by (S.) William L. Macintosh, Assistant Attorney General, Counsel for Appellee.

[File endorsement omitted.]

[fol. 97] In Superior Court of Plymouth County

Docket Entries

No. 21069

Date	No.	
1942		
Sept. 24th	(24)	Copies of Record sent S. J. C. for Commonwealth. (Notice and copies sent to D. A. and Counsel.)
1943		
Feb. 17th	(25)	Rescript: Exceptions sustained (under Sec. 79), Feb. 15, 1943. (Copies sent.)

No. 21070

No. 21071

Date	No.	
1942		
Sept. 24th	(24)	Copies of Record sent S. J. C. for Commonwealth. (Notice and copies sent to D. A. and Counsel.)
1943		
Feb. 17th	(25)	Rescript: Exceptions overruled, Feb. 15, 1943. (See #21069.) (Copies sent.)

1943

Mar. 11th (26) Defendant's motion for stay of execution and intention to appeal to the Supreme Court of the United States filed. (Notice sent:)

May 17th (27) Defendant's petitions for appeals, statement, assignments of error and prayer for reversal filed.

May 17th (28) Defendant's statement as to jurisdiction filed.

May 15th (29) Order allowing appeal signed by John P. Higgins, Chief Justice; filed, May 17, 1943.

[fols. 98-99] May 17th (30) Defendant's statement of points to be relied upon filed.

May 15th (31) Citation to the Commonwealth of Massachusetts signed by John P. Higgins, Chief Justice; filed, May 17, 1943.

May 15th (32) Defendant's bond in $500.00 approved by John P. Higgins, Chief Justice; filed, May 17, 1943.

May 17th (33) Notice calling Appellee's attention to Paragraph 3 of Rule 12 of Rules of the Supreme Court of the United States filed.

May 17th (34) Praecipe for transcript of the records filed.

May 17th (35) Acknowledgment of service signed by William L. Macintosh, Asst. Att.-Gen.; filed May 18, 1943.

[fol. 100] In Superior Court of Plymouth County

Commonwealth of Massachusetts

No. 21070 Cr. No. 21071 Cr.

Commonwealth of Massachusetts

vs.

Sarah Prince

Certification

I, L. Francis Callan, Jr., Assistant Clerk designated by the Superior and Supreme Judicial Courts, as further appears on the records of these Courts, to act for and in the absence of the Clerk, do hereby certify that the record in

the above cause states that the rescript from the Supreme Judicial Court of Massachusetts, dated February 15, 1943, was filed in this office on February 17, 1943; that the order allowing the appeal was signed by the Chief Justice of the Superior Court on May 15, 1943; that inasmuch as May 15, 1943 was a Saturday and the papers were forwarded to this office by mail from Boston, they were recorded and filed on Monday, May 17, 1943.

July 8, 1943.

L. Francis Callan, Jr., Assistant Clerk designated by the Superior and Supreme Judicial Courts to act for and in the absence of the Clerk. (Seal.)

[fol. 101] UNITED STATES SUPREME COURT

STATEMENT OF POINTS TO BE RELIED UPON—Filed June 17, 1943

Comes now appellant in the above entitled cause and states that the points which she intends to rely upon in the Supreme Court of the United States in this cause are as follows:

POINT ONE: The statute as construed and applied abridges and denies appellant's rights of freedom to bring up children in the nurture and admonition of the Lord and to direct the spiritual welfare of said children and their proper worship of Almighty God Jehovah as directed in His Word, contrary to the First and Fourteenth Amendments to the United States Constitution.

POINT TWO: The statute as construed and applied abridges and denies appellant's and her minor ward's rights of freedom of speech, press, and worship of Almighty God Jehovah, contrary to the First and Fourteenth Amendments to the United States Constitution.

[fol. 102] POINT THREE: The statute as construed and applied violates the "due process" and "equal protection" clauses of the Fourteenth Amendment to the United States Constitution because it is vague, indefinite, uncertain, too general, fails to furnish a sufficiently ascertainable standard of guilt, and enables the jury to speculate, and amounts to a dragnet so as to deprive appellant of liberty without equal protection and due process of law.

POINT FOUR: There was no evidence that there existed a clear and present danger that the evils prohibited by the statute would result from the words and actions of appellant.

Alfred A. Albert, Hayden C. Covington, Attorneys for Appellant.

PROOF OF SERVICE

STATE OF NEW YORK,
County of Kings, ss:

Affiant, undersigned, being of lawful age and duly sworn, says that he is a member of staff of law offices of Hayden C. Covington, of counsel for Appellant in the above entitled cause; that he served copy of Appellant's Statement of Points to Be Relied Upon in the Supreme Court of the United States on appellee's counsel by depositing said copy, securely enclosed in a sealed wrapper addressed to The Attorney General of the Commonwealth of Massachusetts, Boston, Massachusetts, and with postage fully prepaid therefor, in a United States Post Office at the City of New York, on the date hereinafter written.

George Jones.

Sworn to and subscribed before me this 16th day of June 1943. William K. Jackson, Notary Public, Kings County. Kings Co. Clk's No. 119, Reg. No. 62-J-5. Commission Expires March 30, 1945. (Seal.)

[fol. 103] UNITED STATES SUPREME COURT

DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED—Filed June 17, 1943

To the Clerk of the Supreme Court of the United States:

You will please print the entire record in the above captioned case now on file with your office, forwarded to you by the Clerk of the Supreme Judicial Court of Commonwealth of Massachusetts, except the following:

1. Citation, page 88.
2. Bond, page 89.
3. Power of Attorney, page 91.
4. Certificate, page 99.
5. Motion for stay, page 41.

6. Any other documents appearing to the Clerk to be unnecessary and immaterial.

Dated, June 16, 1943.

Hayden C. Covington, Attorney for Appellant.

[fol. 104] PROOF OF SERVICE

STATE OF NEW YORK,
County of Kings, ss:

Affiant, undersigned, being of lawful age and duly sworn, says that he is a member of staff of law offices of Hayden C. Covington, of counsel for Appellant in the above entitled cause; that he served copy of Appellant's within Designation of Parts of the Record to be Printed on appellee's counsel by depositing said copy, securely enclosed in a sealed wrapper addressed to The Attorney General of the Commonwealth of Massachusetts, Boston, Massachusetts, and with postage fully prepaid therefor, in a United States Post Office at the City of New York on the date hereinafter written.

George Jones.

Sworn to and subscribed before me this 16th day of June, 1943. William K. Jackson, Notary Public, Kings County. Kings Co. Clk's No. 119, Reg. No. 62-J-5. Commission Expires March 30, 1945. (Seal.)

[fol. 104½] [File endorsement omitted.]

[fol. 105] UNITED STATES SUPREME COURT

DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED—Filed June 22, 1943

To the Clerk of the Supreme Court of the United States:

Now comes the Attorney General of the Commonwealth of Massachusetts and, on behalf of the Commonwealth of Massachusetts, appellee in the above captioned case, respectfully requests that in printing "the entire record in the above captioned case now on file with your office, forwarded to you by the Clerk of the Supreme Judicial Court of the Commonwealth of Massachusetts" as designated by the appellant in her designation of 'Parts of The Record

to be Printed' you print in full the defendant's printed Substitute Bill of Exceptions, part of the record forwarded and certified to you in the above captioned case by the Clerk of the Superior Court of Plymouth, Commonwealth of Massachusetts.

Dated June 21, 1943.

The Attorney General of the Commonwealth of Massachusetts, by William L. Macintosh, Assistan Attorney General Counsel for Appellee.

[fol. 106] PROOF OF SERVICE

COMMONWEALTH OF MASSACHUSETTS,
County of Suffolk, ss:

Affiant, undersigned, being of lawful age and duly sworn, says that he is a member of staff of the Attorney General of the Commonwealth of Massachusetts, of counsel for Appellee in the above entitled cause; that he served copy of Appellee's within Designation of Parts of the Record to be Printed on appellant's counsel by depositing said copy, securely enclosed in a sealed wrapper addressed to Hayden Covington, 117 Adams Street, Brooklyn, New York, and with postage fully prepaid therefor, in a United States Post Office at the City of Boston on the date hereinafter written.

William L. Macintosh.

Sworn to and subscribed before me this 21st day of June, 1943. Roger Clapp, Notary Public. (Seal.)

[fol. 107] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—October 11, 1943

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Endorsed on cover: File No. 47,590. Massachusetts, Superior Court, County of Plymouth. Term No. 98. Sarah Prince, Appellant, vs. Commonwealth of Massachusetts. Filed June 11, 1943. Term No. 98, O. T. 1943.

FILE COPY

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 1089 98

SARAH PRINCE,

Appellant,

vs.

COMMONWEALTH OF MASSACHUSETTS.

APPEAL FROM THE SUPERIOR COURT OF MASSACHUSETTS FOR THE COUNTY OF PLYMOUTH.

STATEMENT AS TO JURISDICTION.

ALFRED A. ALBERT,
HAYDEN C. COVINGTON.
Counsel for Appellant.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 1089

SARAH PRINCE,

Appellant,

vs.

COMMONWEALTH OF MASSACHUSETTS.

APPEAL FROM THE SUPERIOR COURT OF MASSACHUSETTS FOR THE COUNTY OF PLYMOUTH.

STATEMENT AS TO JURISDICTION.

In compliance with Rule 12 (1) of Rules of the Supreme Court of the United States, as amended April 6, 1942, appellant files a statement as to jurisdiction disclosing the bases upon which it is contended that the Supreme Court has jurisdiction upon appeal to review the judgment in question.

Statutory Provisions Sustaining Jurisdiction.

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code (28 U. S. C. 344 (a)).

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April

26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in any case which under prior statute could be received as a matter of right on writ of error.

Massachusetts Legislation Questioned.

In these cases the validity of statutes of the Commonwealth of Massachusetts are called in question as being unconstitutionally construed and applied to the facts and circumstances of these cases. The statutes read: "(Massachusetts General Laws, Chapter 149, Section 80:) PENALTY FOR FURNISHING ARTICLES TO BE ILLEGALLY SOLD BY MINORS ENGAGED IN STREET TRADES, OR AIDING IN VIOLATION OF SECTIONS 69-73.—Whoever furnishes or sells to any minor any article of any description with the knowledge that the minor intends to sell such article in violation of any provision of sections sixty-nine to seventy-three, inclusive, or after having received written notice to this effect from any officer charged with the enforcement thereof, or knowingly procures or encourages any minor to violate any provisions of said sections, shall be punished by a fine of not less than ten nor more than two hundred dollars or by imprisonment for not more than two months, or both. (1913, 831, sec. 22)

"(Section 81:) PENALTY ON PARENT OR GUARDIAN, ETC.—Any parent, guardian or custodian having a minor under his control who compels or permits such minor to work in violation of any provision of section sixty to seventy-four, inclusive, or knowingly certifies to any materially false statement for the purpose of obtaining the illegal employment of such minor, shall for a first offense be punished by a fine of not less than two nor more than ten dollars or by imprisonment for not more than five days, or both; and for a subsequent offense by a fine of not less than five nor more than twenty-five dollars or by imprisonment for not more than ten days, or both. (1913, 831, sec. 23.)"

Timeliness.

The judgment of conviction sought to be reviewed was entered on February 11, 1942, but execution of the sentence was stayed but agreeably to Mass. G. L. (Ter. Ed.) c 279 paragraph 4 noted below until the exceptions alleged by the appellant ordered have been determined by the Supreme Judicial Court on February 27, 1942, and March 30, 1942. On February 15 the appellant's exceptions were overruled as to the two cases (see opinion). A copy of the opinion rendered by the Supreme Judicial Court in this case is annexed.

Appeal is presented herewith, to wit, on May 14, 1943. This application is made to the Superior Court rather than to the Supreme Judicial Court, for the reason that under Massachusetts practice the record remains at all times in the former court, so that the final judgment is that of the Superior Court, not that of the Supreme Judicial Court.

Davis v. *L. L. Cohen Company, Inc.*, 268 U. S. 638, 639;
Myers v. *International Trust Company*, 273 U. S. 380, 381;
New England Railway Company v. *Boston and Albany Railway Company*, 279 U. S.;
Snyder v. *Massachusetts*, 291 U. S. 97, 103.

In civil cases under the Massachusetts practice one judgment is ordinarily entered in the Superior Court while exceptions are pending in the Supreme Judicial Court; if the Supreme Judicial Court overrules the exceptions, the Superior Court then prepares to enter the appropriate judgment. In non-capital criminal cases, however the sentence, which is regarded as constituting the judgment, is imposed immediately after the finding of guilty, though the judge imposing sentence may in his discretion stay its execution directing the pendancy of exception. This differ-

ence in practice between civil and criminal cases was stated as follows in *Commonwealth* v. *Millen*, 290 Mass. 406 (at page 411):

> "Under our system, by which civil and criminal cases at law have commonly come to this court upon a bill of exceptions, the original theory was that all exceptions taken had to be disposed of before final judgment could be entered.
>
> "The final judgment in criminal cases is called sentence.
>
> "Tyndale *v.* Stanwood, 186 Mass. 59;
> "McCusker *v.* Geiger, 195 Mass. 46, 51, 52;
> "Sasserno *v.* Sasserno, 240 Mass. 583, 585;
> "Bartlett *v.* Roosevelt, Inc., 258 Mass. 494, 497."

Gen. Law 279, Section 4 is as follows:

> "Sentence shall be imposed upon conviction of a crime, except as otherwise provided in section forty-seven in case of a conviction of a capital crime, although exceptions have been alleged or an appeal taken. If sentence is imposed upon conviction of a crime not punishable by death, the reservation, filing or allowance of exceptions or the entry of an appeal shall not stay the execution of the sentence unless the justice imposing it, or a justice of the supreme judicial court, files a certificate that in his opinion there is reasonable doubt whether the judgment should stand; and if execution of sentence is so stayed justice may at the same time make an order relative to the custody of the prisoner or for admitting him to bail."

As will be observed, the stay granted under this statute does not vacate the judgment but merely suspends its operation. If the defendant should now elect not to carry the case further but to pay the fine imposed at the trial, this would be in pursuance of the judgment then entered. No new sentence—analogous to a final decree after rescript in equity—would be necessary. It is true that the Superior

Court, after the coming down of the rescript, still has the power to reduce the sentence if some very exceptional cause is shown (*Commonwealth* v. *Lobel*, 187 Mass., 288; *Commonwealth* v. *O'Brien*, 175 Mass. 37). In the absence, however, of anything to show that either party seeks to revoke this power of revision, the finality of the judgment for purposes of appeal is not affected.

Southern Ry. Co. v. *Cliff*, 260 U. S. 316;
Des Moines National Bank v. *Bennet*, 283 U. S. 813, 284 U. S. 239 in Robertson and Kirham's Jurisdiction of the Supreme Court of the United States, p. 71.

It follows that the final judgment in the cases at bar so far as concerns the right of appeal to the Supreme Court of the United States was the judgment entered by the Superior Court.

The time for claiming the appeal, however, would not begin to run so long as it remained possible that the judgment might be reversed through the sustaining of the exceptions, i. e. not until the overruling of the exceptions on February 15, 1943 and entry thereof in the Superior Court on February 17, 1943.

Andrews v. *Virginian Ry. Company*, 248 U. S. 272.

Opinion.

The opinion of the Supreme Judicial Court of Massachusetts is attached hereto as appendix to this statement. It also appears in the record at pages — to —.

Statement of Nature of the Case and Rulings of Court Bringing Case Within Jurisdictional Provisions Relied Upon.

In the District Court of Brockton, Massachusetts, the appellant, Sarah Prince, was charged by complaint with

violation of General Laws, Ter. Ed., Chapter 149, Sections 79, 80 and 81. The conviction resulting from the complaint filed under Section 79 was reversed by the Supreme Judicial Court of Massachusetts at the time that the other two convictions were sustained, and hence only the latter two are here pertinent, and the complaints thereunder are as follows:

"(Under Section 80:) To the District Court of Brockton holden at Brockton for the transaction of criminal business within the County of Plymouth, GEORGE S. PERKINS of Brockton, in said County of Plymouth, in behalf of the Commonwealth of Massachusetts, on the second day of January in the year of our Lord one thousand nine hundred forty-two, on oath complains that SARAH PRINCE of Brockton in said County of Plymouth, on the eighteenth day of December in the year of our Lord one thousand nine hundred forty-one, at Brockton in said County of Plymouth did furnish to one Betty M. Simmons, a girl under the age of eighteen years, certain articles, to wit: magazines, she, the said Sarah Prince well knowing that the said Betty M. Simmons was to sell the said magazines unlawfully."

"(Under Section 81: Same in substance as the above complaint except for the following:) was the custodian of Betty M. Simmons, a minor, and did permit the said Betty M. Simmons to work contrary to law."

Appellant filed and urged a motion to dismiss and/or quash the three charges (R. 3-5), which was overruled and exception allowed (R. 5).

Appellant then pleaded "not guilty" (R. 3).

At conclusion of the Commonwealth's evidence, the appellant renewed her motions to dismiss and/or quash as to all three complaints and filed her motion for directed finding on all three complaints (R. 5-7). The court de-

clined to rule on this motion (R. 7). At conclusion of all the evidence, appellant again renewed her motions to dismiss and/or quash, and her motion for directed finding, and the court denied both, whereupon appellant duly excepted (R. 7).

Under grounds two through six inclusive of the motion to dismiss and motion for directed finding, and also under number 13 of the requested rulings, appellant attacked the statutes on grounds that on their face, by their terms, and as construed and applied, they abridged appellant's rights of freedom of speech and of press and freedom to worship Almighty God, contrary to the first and fourteenth amendments to the United States Constitution (R. 3-6, 9).

The Supreme Judicial Court of Massachusetts considered each one of the appellant's exceptions noted to the action of the lower courts in overruling said motions and refusing to enter the requested findings, and then overruled all of said exceptions under the two complaints here involved (R.). The Court held that on its face and by its terms the statute did not abridge the rights of freedom of press and speech, contrary to the Federal Constitution (appendix p. , R.). The court held that as construed and applied the rights of freedom of speech and of press were not abridged contrary to the first and fourteenth amendments (appendix p. , R.). The court held that freedom to worship Almighty God was not impaired by the conviction and judgment, contrary to the first and fourteenth amendments to the United States Constitution (appendix p. , R.).

Statement of Facts.

Appellant, one of Jehovah's witnesses, is an ordained minister of the gospel of God's kingdom (R. 15). The evidence shows that appellant was the aunt and custodian

of one Betty M. Simmons, a girl eight years of age (R. 15). About 8:45 p. m. on the day above mentioned, appellant took Betty Simmons with her to the corner of Legion Parkway and Main Street, public streets in the busines section of the City of Brockton. The evidence shows that appellant furnished the little girl with a cloth bag on which was printed:

"Watchtower explains the Theocratic Government"

"5c a copy"

"Watchtower—Consolation—5c a copy"

In the bag, which was suspended from her shoulder by a cloth strap, were copies of the publications "Watchtower" and "Consolation", and she also held up a copy of each so that pedestrians could see them, and at the same time saying, "Remedy for World Distress" "Read the Watchtower" (R. 15).

Betty Simmons explained her presence on the street and her reason for engaging in this work, testifying, "I love the Lord and He commands us to"; and also she declared that such was her way of worship. She stated that she was not selling the magazines, but that she would give them to whoever agreed to read them. Furthermore, she said that she would accept money contributions from persons receiving the magazines who desired to make a small contribution to cover the cost of printing more like literature, which money she said she would turn over to the appellant. The evidence shows that Betty was on the street that evening by her own request over the appellant's objections, and that while there she did not actually distribute any magazines or take any contributions, though such was her admitted intention (R. 15, 19).

There is no evidence that the child or the appellant was blocking, or in any manner interfering with, normal movement and flow of traffic on the sidewalk. Neither were they

deporting themselves in an obstrusive or indecent manner, but on the contrary it was shown that they were standing together on the edge of the walk displaying the literature in the manner above described.

Both magazines named are Scriptural periodicals containing Bible references, and are not subversive, nor do they advocate the use of force by other persons or anyone to overthrow the government. *The Watchtower* strictly adheres to the Bible as authority for its utterances, being strictly free and separate from all religion, parties, sects or other worldly organizations. It is wholly and without reservation for the Kingdom of Jehovah God under Christ His beloved King. It is not dogmatic, but invites careful and critical examination of its contents in the light of the Scriptures. It does not indulge in controversy and its columns are not open to personalities. *The Watchtower* advocates that Jehovah God is the only true God, Maker of heaven and earth, and the Giver of life to His creatures; that God created the earth for man, originally made perfect, and placed man upon it; that man willfully disobeyed God's law and was sentenced to death, and by reason thereof, death came upon all the descendants of the first man, Adam; that Jesus Christ was made human through miraculous conception and birth and suffered death in order to provide a redemptive price, for those only of mankind who desire to serve Jehovah God and live; that Jesus Christ was thereafter raised unto heaven and placed at the right hand of Jehovah God, His Father, to be the King of Jehovah's everlasting government, The THEOCRACY, and thereafter proceeded to oust the adversary Satan and his legion of wicked angels from heaven; that Satan is now attempting to turn all mankind away from God and into destruction and violently to oppose and destroy those who dare to act as witnesses for Jehovah God, His Word, and His Kingdom, as did Christ Jesus when on earth; that

Christ Jesus is the great Executioner for the Supreme Judge and is now proceeding to execute judgment of everlasting destruction upon Satan's governments and all supporters thereof, invisible and visible in the earth, in Jehovah's battle at Armageddon, which is very near, following which Act of God there will be established completely and exclusively in the earth Jehovah's righteous and permanent government, His "new world", for which Christ Jesus taught all true servants and worshipers of Jehovah to pray. An examination of *The Watchtower* conclusively proves that its pages from cover to cover of each issue contain a written sermon explaining the foregoing matters in greater details.

While thus standing on the street they were accosted by George S. Perkins, supervisor of attendance at the public schools. He testified that he told appellant she was violating the law, and warned her that she must "get off the street" with the child or else he would have to arrest her. Appellant replied that both she and the child had a constitutional right to do that work on the street, and that they did not intend to leave. Later that evening, just as appellant and the child were leaving their post preparing to go home, Perkins again warned appellant; whereupon she referred him to Roger M. Flint, the man in charge of the local distribution of the literature, who at that time was with appellant. Appellant left the two men talking on the street and took the child home. Later appellant was arrested on complaint signed by Mr. Perkins and growing out of the above incident. R. 21.

Appellant testified:

> "Jehovah God has commanded the people to come out of the religions, Catholic, Protestant, Jew or Gentile. That is the first thing that is going down, and all who are in with religion will perish with religion. It is on its last skids now. That

is why we are on the street corners. Christianity will survive, not religion. The destruction of the wicked at that time will be tremendous, far exceeding anything in human history. The nations of Christendom are forgetters of God. His name has been blasphemed and reproached down through the ages. But he says, 'They shall know that I am Jehovah.' For no other reason was I on the street corner, and my children, but to tell the people of the one place of safety, that is in the kingdom of God under Christ that we have prayed for. Most people pray automatically for that kingdom." (R. 20.)

Appellant further testified that "it is not a selfish work or carried on for any pecuniary gain" (R. 20), but was done entirely without profit. Contributions received from the people were turned over to Roger Flint, the local company servant and the individual responsible for the distribution of the magazines, who in turn sent the money to the Watchtower Bible and Tract Society in Brooklyn, New York. R. 22.

The evidence further showed that appellant regarded it as her solemn obligation to Almighty God thus to preach the gospel and teach the children under her care to do likewise. She said that she had been engaged in that work for more than 31 years. R. 19.

Grounds and Decisions Sustaining Jurisdiction and Showing That Substantial Federal Questions Are Involved.

FIRST.

The Statute in question is unconstitutional on its face and as construed and applied because abridging and denying appellant's right to freedom of press, freedom of speech, and freedom to worship Almighty God according to His commands written in the Bible and the dictates of her conscience, contrary to the First and Fourteenth Amendments to the United States Constitution.

Decisions Cited.

Lefebvre, In re, — N. H. —, 20 A. 2d 185;
State v. *Richardson,* — N. H. —, 27 A. 2d 94;
Meyer v. *Nebraska,* 262 U. S. 390;
Pierce v. *Society of Sisters,* 268 U. S. 510;
Allgeyer v. *Louisiana,* 165 U. S. 578;
Berea College v. *Kentucky,* 211 U. S. 45, 67;
Lawton v. *Steele,* 152 U. S. 133;
United States v. *Carolene Prod. Co.,* 304 U. S. 144;
Schneider v. *State,* 308 U. S. 147;
Herndon v. *Lowry,* 301 U. S. 242;
Bridges v. *California,* 314 U. S. 252;
Jamison v. *State of Texas,* —U. S. —, 63 S. Ct. 669;
Hague v. *C. I. O.,* 307 U. S. 496;
Thornhill v. *Alabama,* 310 U. S. 88;
Carlson v. *California,* 310 U. S. 106;
Lovell v. *Griffin,* 303 U. S. 444;
Cantwell v. *Connecticut* 310 U. S. 296.

SECOND.

The statute as construed and applied operates to prohibit appellant from teaching the children in her charge the commandments of JEHOVAH GOD, *and makes it unlawful for children to carry out such requirements, in contravention of the First and Fourteenth Amendments to the United States Constitution.*

Decisions Cited.

Skinner v. *Oklahoma* 316 U. S. 535.
Lefebvre, In re supra.
State v. *Richardson supra.*
Lovell v. *Griffin supra.*
Schneider v. *State supra.*
Cantwell v. *Connecticut supra.*
Jamison v. *State of Texas supra.*

Discussion of Statute in Question and of Federal Questions Presented on This Appeal.

This honorable court is now called upon to exercise its power to review a judgment of the state court for the purpose of protecting the most sacred of all human rights from encroachment by misapplied laws. That right is the God-given duty and privilege of parents to raise their children up in the nurture and admonition of the Lord and to direct the children in their proper worship or service of Jehovah God.

The court below encroached unlawfully upon this right by applying a statute directed at commercial exploitation of children through unlawful *child labor*. It has been wrongly misinterpreted by the police officials of the City of Brockton to cover the charitable preaching, worship and service to Almighty God by appellant and minor children under her charge. The *superior right* of appellant properly to direct the spiritual welfare of children in her charge by permitting them to engage in Godly practices not inimical to their own welfare or the welfare of the state cannot be overcome by misapplication of an ordinance directed at other activity. The undisputed evidence shows that the acts engaged in by appellant and the minor child were acts of worship of Jehovah God. Such activity does not violate the laws of morality, nor infringe personal rights of others, nor present a clear and present danger against the peace and dignity of the state. The judgment of the court below is void and should be reversed because appellant's unalienable constitutional rights have been illegally abridged by wrongful application of the statute.

The undisputed evidence shows that appellant did not profit from the activity of the child in distributing the literature. There is no showing or contention that the activity in which she was engaged was commercial. The

appellant did not compel her charge to engage in the service of the Lord but permitted the child to act as one of Jehovah's witnesses only when she volunteered. She did not object to the child's engaging in such activity. The child had entered into a covenant with Jehovah to serve Him and considered it her bounden duty to preach the gospel by publicly presenting it upon the streets by means of distribution of the literature in question.

Marriage and childbearing is God's arrangement for all humankind that shall live on the earth. It is beyond the power of the state to interfere with or abridge the right of all persons within its boundary to procreate. Even this right cannot be denied to criminals. *Skinner* v. *Oklahoma*, 316 U. S. 535. *A fortiori* the state cannot interfere with and abridge the parents' right to bring up children in a way acceptable to their own judgment so long as it is not inimical to the welfare of the children or the well-defined interest of the state.

The children must be taught by the parents to be obedient to the Lord and His commandments or rules found in the Bible: Upon the parents is placed the duty to teach their children morality, honesty, integrity, obedience and meekness and, above all, the commandments of Almighty God, JEHOVAH.

Upon all parents who are in a covenant to do God's will there is laid the duty and specific obligation to teach their children the Word of God and it is the duty of the children to obey their parents who give such instruction. The parent will be diligent to bring his children to congregations where the commandments of Almighty God are studied and discussed. The children are permitted to participate therein so that they might learn the way of righteousness and how they might receive life everlasting. When Moses stood before Jehovah's typical covenant people on the

plains of Moab and delivered the instruction from Jehovah he knew that soon thereafter the children would take the place of their parents in the ranks of God's army. Forcefully he urgently reminded the parents of their duty to their children. He urged upon them diligence and faithfulness in teaching the truth to their children. That was important then; the fulfillment thereof is of greater importance now. See Deuteronomy 4:9, 10; 6:5-8; 11:18-21; 12:28; 32:46. The apostle of Christ Jesus also states the command thus: "And, ye fathers, provoke not your children to wrath; but bring them up in the nurture and admonition of the Lord." (Ephesians 6:4) The children also are commanded: "Children, obey your parents in the Lord; for this is right. . . Honour thy father and mother, which is the first commandment with promise, that it may be well with thee, and thou mayest live long on the earth."—Ephesians 6:1-3.

"Nurture" means to discipline and train the child in the way of righteousness; and such way of righteousness God has marked out in His Word. "Admonish" means to teach and instruct; to counsel and advise the children of and in accord with the expressed will of God set forth in the Bible. Parents who failed thus to instruct their children would be provoking their children to do wrong or to wrath. The words "right" and "righteous" are from the same root and mean the same thing.

Appellant was glad to discharge her responsibility under the law to instruct her little charge in righteousness and obedience; and the child was meekly and joyfully obedient to the commandments of the Lord. The duty of the parent does not end with instruction. If the child indicates a willingness to do the will of God, the parent is under obligation to aid the child in taking the necessary steps to serve the Lord by doing the overt act of participating in the

positive command of preaching the gospel of God's kingdom to others. Appellant did this and took the child with her in the preaching activity.

To permit the child to *believe* in righteousness and to refrain from *practicing* right is entirely wrong. "For as the body without the spirit is dead, so faith without works is dead also." (James 2:26). "Let your light so shine before men, that they may see your good works, and glorify your Father which is in heaven." (Matthew 5:15, 16). It is therefore the duty and privilege of parents and children to *practice what they preach* by consistently acting as Jehovah's witnesses before men. This the appellant and her minor charge have done on the streets of their community by distributing the *Watchtower* magazine to persons of goodwill toward Almighty God.

In this they are doing the will of Jehovah and by their conduct they say: "I delight to do thy will, O my God." (Psalm 40:8) "Thy word is a lamp unto my feet, and a light unto my path. . . . My tongue shall speak of thy word; for all thy commandments are righteousness."—Psalm 119:105, 142, 144, 172.

It cannot be said that the child is too young to be permitted thus to worship and serve Jehovah God. The state has no authority or power to tell a child at what age it can begin practicing the requirements of Almighty God taught it by the parent. Thus to allow the state to intervene would forever destroy and end the unalienable American heritage of the right to maintain a home, raise children and follow generally the pursuits of happiness enjoyed by a free people. The state can intervene with respect to the care and education of the child only when the parent "neglects" or "misuses" the child to such an extent as to endanger its welfare and the interests of the state. As long as the parent does not violate this fundamental rule the state cannot in-

terfere with the "religious" practices of the parents and children.

It is not contended that appellant neglected her duty in bringing up the child. It is not contended that she is not providing her a proper home or education, or permits her to run at large. It is not contended that she is exploiting the child or keeping her away from public schools. The undisputed evidence shows that the only act made the basis of the complaint is that she permitted the child to worship Jehovah God according to the desires of her heart and mind and the dictates of God's Word by distributing the magazine and accepting money contributions.

There is no evidence that there was a sale or that the child was offering or exposing for sale periodicals or magazines; on the contrary, the evidence clearly shows that she was preaching the gospel. "Sale" is necessarily confined to a commercial project, such as purveying of ordinary articles of merchandise. It cannot and does not include the distribution of Bible literature by one of Jehovah's witnesses simultaneously receiving money contributions. Money so received is similar to that received by recognized religious organizations or clergymen in the church edifices. When one goes to such church buildings and contributes twenty-five cents, more or less, it cannot be said that the sermon was "sold" to him. The charitable nature of the activity is not changed by the fact that the one contributing the money *thought* or testified that he "bought" a sermon or concluded that it was *sold* to him.

An examination of the entire evidence shows that appellant's activity is charitable and non-profit. It is not contended that any of the literature was held back from anyone for want of money contribution. The evidence shows that appellant and her young charge gave away free as many pieces of literature to non-contributors as contributors of money had accepted from them.

There is no contention that appellant individually profited or gained anything from the contributions given to the child. The entire case is based on the false conclusion by the officer who testified that a *sale* was made by the child. Constitutional rights are not dependent upon whether the one exercising them refuses to accept money contributions to aid the good work done by him. If such a distinction is sustained then the purposes of the ordinance to prevent exploitation of children could be circumvented by instructing the children to refuse to accept or offer to accept money contributions. Surely the inherent liberty of the people does not depend upon such a *fine* distinction!

The ordinance can be no more constitutionally applied to appellant than could the ordinance be validly applied to Catholic priests who constantly employ and use "altar boys" in the traditional Catholic mass service throughout the nation and in the City of Brockton. If this law can be sustained as to Jehovah's witnesses, then there is nothing to prevent the states and cities from prosecuting Catholic priests and parents of Catholic children who permit them to act as "altar boys" in the performance of their religious ceremonies and traditional modes of worship.

The act of serving Almighty God by preaching the gospel publicly on the streets is to appellant and her charge and other of Jehovah's witnesses a most sacred practice, and the courts should be reluctant to infringe upon the exercise of that right because of conscience' sake. The situation presented here is much different from that of a child employed to sell newspapers on the streets. Here the child is engaged in the sacred act of witnessing to the name, the honor and the revealed purposes of Almighty God, JEHOVAH. The words of the New Hampshire Supreme Court (*In re Lefebvre*, 20 A. 2d 185) seem appropriate:

> "Loving parents who do their best for their children in support, nurture and admonition are of more worth

than pecuniary means. Righteous and generous motives may be of more importance than notions that chime with majority opinions of what is good form or what is the best method of teaching patriotism. . . . But in view of the sacredness in which the State has always held freedom of religious conscience, it is impossible for us to attribute to the legislature an intent to authorize the breaking up of family life for no other reason than because some of its members have conscientious scruples not shared by the majority of the community, at least provided those scruples are exercised in good faith, and their exercise is not tinged with immorality or marked by damage to the rights of others."

It is noticed that the construction given the terms of the ordinance by the officials of Brockton permits a parent of a child of the prohibited age to allow the child to wander about aimlessly upon the streets with nothing to do without being subject to the terms of the ordinance. At the same time the ordinance is construed in such a manner as to permit the prosecuting of a parent who honestly directs his child in constructive activity for the child's welfare as well as that of the persons to whom the child ministers. Such construction makes the ordinance unreasonable and arbitrary.

Our views on the questions here presented are well summarized by the Supreme Court of New Hampshire in the case of *State* v. *Richardson*, 27 A. 2d 94, involving a statute of that state identical in substance and purpose with the ordinance in question here. The statute (P. L., c. 118, s. 21) provides that boys under ten and girls under sixteen shall not "sell or expose or offer for sale newspapers, magazines, periodicals or other merchandise in any public street or public place." The New Hampshire statute was held to be inapplicable to the identical activity as that here involved. The reasons there expressed present forceful argu-

ment here that for the same cause the ordinance here should be held unconstitutional. Chief Justice Allen said:

> "It is thought that the activity in which the boy under the defendant's leadership was engaged is not within the tenor and spirit of the prohibition of sales in public places. His service was not fairly to be classified as a business enterprise or as work, in the ordinary sense of words. To use a common expression, he was not exploited to help as a source of family income and material resources or to promote the defendant's financial welfare. Any exploitation of the boy was for other than pecuniary ends. He was performing a service under his mother's auspices, and the few cents he received were no impaction on the controlling religious character of his service, so as thereby to transform it into one of employment or work. The money-making feature of his service is too insignificant to receive notice as a factor modifying a strictly religious engagement into one with business attributes. The boy was not a newsboy on the occasions in question, and an occupational element, even of temporary duration, is not to be ascribed to his activity. Nor is there any claim that his education required by law was disturbed or menaced. . . .
>
> "The State's argument that the statute was partly designed to protect the morals of young children by keeping them off the streets and out of public places, is not impressive. So far as concerns the case, the boy was in his mother's custody and general charge. In respect to the statute, it would be a clearly unreasonable discrimination that young persons might be on the streets with nothing to do, while others might not if they had some occupation there.
>
> ". . . The facts do not constitute a mischief or evil which the legislation undertakes to suppress."

In the case at bar the child was preaching, ministering the gospel message, not *selling*. Preaching the gospel of

the kingdom of God is the proclaiming to others the Scriptural truths of and concerning Jehovah God and His Kingdom, The Theocracy, under Christ Jesus. From the Scriptural standpoint it is not unusual that a child should teach and preach the gospel at a very early age. When Jesus was twelve years old and long before He was anointed with God's holy spirit, he preached and taught as "one engaged in His Father's business", i. e., as one of Jehovah's witnesses, in the temple, where he confounded the wise men and astonished them with his understanding and answers. (Consider Luke 2:46-49) Timothy, long before he reached the age of maturity and while yet a small child, also taught and preached. He accompanied the apostle Paul, who preached publicly in the market places, on the streets and from house to house. See Acts 16:1-3; also 1 Timothy 4:12 where Paul writing to his 'son of faith,' Timothy, said: "Let no man despise thy youth; but be thou an example of the believers, in word, in conversation, in charity, in spirit, in faith, in purity." Samuel was consecrated for service in the temple when very small and of tender age.—1 Samuel 1:24; 2:11,28. See also Jeremiah 1:6, 7.

Christ Jesus condemned the Pharisees because of their effort to prevent and ridicule the following of little children after him. He said: "Suffer little children to come unto me, and forbid them not; for of such is the kingdom of God." (Luke 18:16) See also Luke 11:52; Matthew 18:1-6; Psalms 8:2; 148:12, 13; Proverbs 8:32.

Therefore it is unreasonable and unscriptural to contend that it is not proper for a child to engage in publicly giving praise to Jehovah God by acting as His witness in distribution of literature explaining Bible prophecy and present-day fulfillment thereof. It should be borne in mind that this is the primary way that Jehovah's witnesses worship and serve Almighty God and to deny this right to the children through punishing the parent because the children

exercise such right is to deny to them freedom of worship of Almighty God, which freedom alone gives freedom from want and from fear.

The holding of the court below is in conflict with this principle as declared by the Supreme Court of the United States in *Meyer* v. *Nebraska*, 262 U. S. 390, where was set aside a conviction of a person who taught the German language to children in public schools contrary to a state statute. It was held that the statute infringed the right of the individual to marry, establish a home, bring up children and to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. The judgment of the court below is contrary, also, to the holding in *Pierce* v. *Society of Sisters*, 268 U. S. 510, where the Oregon Compulsory Education Law requiring all children to attend *public* schools unreasonably abridged the constitutional right of parents to direct the upbringing and education of children under their control. See also *Allgeyer* v. *Louisiana*, 165 U. S. 578, 589; and *Berea College* v. *Kentucky*, 211 U. S. 45, 67.

The sound and constitutional rule is that the liberty of the parent may not be interfered with under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the State to effect. Determination by the Legislature of what constitutes proper exercise of police power is not final or conclusive but is subject to supervision by the courts. *Lawton* v. *Steele*, 152 U. S. 133, 137. See *United States* v. *Carolene Products Co.*, 304 U. S. 144, 152; *Schneider* v. *State*, 308 U. S. 147, 162-164; and *Herndon* v. *Lowry*, 301 U. S. 242.

Before these inherent freedoms can be abridged there must be presented some clear and present danger that the act will immediately invade rights of others and be inconsistent with the welfare of the children, and be immedi-

ately inconsistent with the peace and safety of the state. *Bridges* v. *California*, 314 U. S. 252. Admittedly there is no clear and present danger that the evil will result that is claimed by the state in this case. Also there is no rational relation between the ends aimed for and the means employed by the ordinance. See Freund, *The Police Power*, pp. 133, 497.

The statute is not regulatory but is clearly unconstitutional and void because it is absolutely prohibitory as construed and applied to activity of the appellant and her minor charge.

Mr. Justice Black, speaking for this Court in the opinion in *Jamison* v. *Texas* (— U. S. —, 63 S. Ct. 669, decided March 8, 1943), said:

> "• • • But one who is rightfully on a street which the state has left open to the public carries with him there as elsewhere the constitutional right to express his views in an orderly fashion. This right extends to the communication of ideas by handbills and literature as well as by the spoken word."

Ordinances of Los Angeles, Milwaukee and Worcester containing prohibitory provisions were declared invalid and unconstitutional in *Schneider* v. *State*, *supra*. In *Hague* v. *C. I. O.*, 307 U. S. 496, 501, 518, the ordinance declared unconstitutional forbade any person to "distribute or cause to be distributed or strewn about any street or public place any newspaper, paper, periodical, book, magazine, circular, card or pamphlet." See, also, *Thornhill* v. *Alabama*, 310 U. S. 88, and *Carlson* v. *California*, 310 U. S. 106.

The profound principles set forth in those cases were not lightly considered. The rights being dealt with were realized to be the most delicate, precious and sacred franchises possessed by free men, and were therefore to be

jealously guarded against encroachment. Today, deprived of those rights, half of earth's population groans beneath the lash of the dictator while the other half fights desperately to retain its freedom. The decisions last cited above stand as an exquisite tribute to the God-given LIBERTY they shield for every inhabitant of this "land of liberty", which, though embattled and hard pressed for its existence, nonetheless preserves its identity and steadfastly refuses to be drawn into the quagmire of oppression and despotism.

What this Court has said with reference to the need to preserve fundamental rights of each inhabitant of this land against encroachment not only means that adults shall freely enjoy those rights but the principle applies with equal force to the oncoming generation. Having previously determined that an adult has the right peacefully to engage in the work carried on by appellant here,[1] by what force of reason can it be said that a child does not have the same right?

If the parent is considered to have that inviolable right to worship ALMIGHTY GOD by affirmatively carrying into operation God-given commandments written in His Word for His covenant-bound servants,[1] how can it be fairly contended that a child does not have a similar right when similarly bound in covenant to do the will of the Eternal God?

The Federal Constitution created the federal governing establishment primarily for the purpose of protecting the sovereign PEOPLE of the United States of America in *their* exercise and enjoyment of the "blessings of liberty" both for themselves *and 'their posterity'*.

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[1] *Lovell* v. *Griffin*, 303 U. S. 444; *Schneider* v. *State*, 308 U. S. 147; *Cantwell* v. *Connecticut*, 310 U. S. 296; *Jamison* v. *State*, • • • U. S. ——, 63 S. Ct. 669; *Largent* v. *State*, —— U. S. ——, 63 S. Ct. 667. As to the right to distribute literature on the street, see also *Hague* v. *C. I. O.*, 307 U. S. 496; *Thornhill* v. *Alabama*, 310 U. S. 88; *Carlson* v. *California*, 310 U. S. 106.

The document creating that federal government impliedly freed the *federal government* (including every federal employee as such) from any sort of imposition or restraint by state law upon the execution of its powers and duties regularly performable *in the public interest*. The same document expressly restrains and estops the *federal government* from encroaching upon the fundamental personal rights of the sovereign people, which restraint and estoppel have likewise been expressly extended and made applicable to the respective state governments, including every local governing agency authoritatively created and operated within each state.

Here it cannot be denied that appellant was exercising a *federal* right secured impliedly by the United States Constitution, even as every federal employee exercises the right to perform assigned duty in the public interest. By the same token, every inhabitant of the land is protected in the exercise of constitutionality guaranteed personal rights. The rights of the sovereign people, collectively and individually, are equally secure with the rights of the people's agent, the federal government, against abridgment under the federal compact.

The argument that the statute at bar was designed to protect the morals of young children carries no weight here because the evidence shows that the child was then and there in the watchful care of her guardian who stood with her, and was no more exposed to the dangers of the street than were children of others—children accompanied by parents or guardians on those very streets, on pleasure and business errands. To the contrary, it must be admitted that her activity there in announcing the message of God's kingdom would have a wholesome effect, both upon the child and upon those who were responsible for shielding her from harm, as well as upon all others who saw her acting as she was or

accepted of the message she tendered to them in *their* interest.

Since when has it become a crime in this "Christian nation" for a little girl to say politely to her neighbors, "Remedy for world distress; read The Watchtower"?

The Godly message contained in the literature tendered by this little one to pedestrians is vitally *needed* by all who sigh, cry and mourn now because of the unmatched distress that afflicts all peoples of earth and who can be made glad by learning of the bright hope for a permanently better world announced by this little girl. The tendered message is irrefutably a public benefit, is of unparalleled importance in this hour of strain, rather than a public menace!

Parents and guardians allowing their children thus to serve ALMIGHTY GOD and perform a real public *service* are undeniably to be *commended* rather than *condemned.*

The statute has been construed so as to read, in effect, as follows: 'It shall be unlawful for any child (minor) to worship Almighty God within the City of Brockton.' If the statute expressly so provided, all persons—even the least informed—would admit that it was void and a nullity. From the construction given the ordinance and its application in this case it must be conceded that it is unconstitutional and void for the reason that it abridges and prohibits worship of ALMIGHTY GOD by any minor and denies the right of the parent or guardian to direct that minor in the way he (or she) should go.

Conclusion.

For sake of brevity, reference is here made to Petition for Appeal filed in this cause, with which we incorporate by such reference, each and every assignment of error therein contained and hereby make the same a part hereof to show that substantial federal questions were presented before the Su-

preme Judicial Court of the Commonwealth of Massachusetts.

WHEREFORE the Supreme Court of the United States should note jurisdiction of this cause for final hearing in accordance with the rules of the court, because the courts below disposed of important and substantial federal questions in a way that is in conflict with applicable decisions of this Court and have so radically and far departed from the Constitution of the United States and the accepted and sound course of the judicial procedure as to call for this Court's power of supervision to halt the same.

Respectfully and confidently,

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APPENDIX.

SUPREME JUDICIAL COURT OF COMMONWEALTH OF MASSACHUSETTS.

COMMONWEALTH

v.

SARAH PRINCE. (and Two Companion Cases Against the Same Defendant).

Plymouth. November 2, 1942.—February 15, 1943.

Present: FIELD, C. J., DONAHUE, QUA, COX, & RONAN, JJ.

Minor. Constitutional Law, Freedom of the press, Religion, Police power, Public place, Self incrimination. *Way,* Public: distribution of literature, "street trade." *Sale,* by minor.

Complaints heard in the Superior Court by *Hayes,* J., a District Court judge sitting under statutory provisions.

QUA, *J.*

There was evidence tending to show the following: On the evening of the day named in each of these three complaints the defendant was on a public street in Brockton with her niece, one Betty M. Simmons, a girl in her ninth year, of whom the defendant was the custodian. Both the defendant and the child belonged to a religious sect known as "Jehovah's witnesses" and as such regarded themselves as "ordained ministers" of God. Betty carried a "magazine bag" on which was printed "Watchtower explains the Theocratic Government" "5c a copy." In the bag were copies of the religious publications "Watchtower" and "Consolation." Betty held up a copy of each in her hand. She testified that she was "taking contributions" of five cents for each magazine, or more "if people should give more"; that she was not selling them; that on that night she did not receive any contributions or give any magazines away; that when she had received "contributions" she gave all the money to the defendant; and that the defendant had given her the bag

and the magazines. The defendant admitted at the trial that she had given Betty the bag and the magazines and testified that she told Betty "where to stand."

There was further testimony by the defendant and witnesses called by her to the effect that a person interested could obtain a copy of a magazine without paying the five cents; that the enterprise of distributing the magazines was not carried on for profit but was a religious and charitable enterprise; and that she and her children were on the street corner for no other reason "but to tell the people of the one place of safety, that is in the kingdom of God under Christ that we have prayed for."

There was also evidence from which it could have been found that on the evening in question the defendant, when asked by the supervisor of attendance to give him Betty's name, refused to do so, although she knew he was such officer and that he desired the name to aid in the enforcement of the law. There was evidence that the supervisor insisted that he did not already know Betty's name; that during the interview he said that he had a right to arrest the defendant; and there was evidence that on a previous occasion he had explained to her that it was against the law to allow children on the street selling magazines.

General Laws (Ter. Ed.) c. 149, s. 69, as amended by St. 1939, c. 461, s. 7, provides in part that "No boy under twelve and no girl under eighteen shall sell, expose or offer for sale any newspapers, magazines, periodicals or any other articles of merchandise of any description, or exercise the trade of bootblack or scavenger, or any other trade, in any street or public place." Section 77 provides that ss. 69 to 73 shall be enforced by supervisors of attendance and police officers and vests the former with "full police powers for the purpose." Section 79 provides in part that any person "who refuses to give" to a supervisor of attendance "such information as may be required for the proper enforcement of sections sixty to seventy-four, inclusive, shall be punished * * *" Section 80 provides that "Whoever furnishes * * * to any minor any article of any description with the knowledge that the minor intends to sell such article in violation of any provision of sections sixty-nine to

seventy-three, inclusive * * * shall be punished * * *." Section 81 provides that "Any * * * custodian having a minor under his control who * * * permits such minor to work in violation of any provision of sections sixty to seventy-four, inclusive * * * shall * * * be punished * * *."

One Perkins, supervisor of attendance of the schools of Brockton, made these three complaints against the defendant charging respectively that on December 18, 1941, at Brockton the defendant (first complaint, for violation of s. 79) "did refuse to give to George S. Perkins, attendance officer of said Brockton, certain information, to wit: the name and age of Betty M. Simmons, a minor under the age of eighteen years, such information being required for the proper enforcement of the law"; (second complaint, for violation of s. 80) "did furnish to one Betty M. Simmons, a girl under the age of eighteen years, certain articles, to wit: magazines, she, the said Sarah Prince well knowing that the said Betty M. Simmons was to sell the said magazines unlawfully"; and (third complaint, for violation of s. 81) "was the custodian of Betty M. Simmons, a minor, and did permit the said Betty M. Simmons to work contrary to law." Upon appeal to the Superior Court the complaints were tried by a judge without a jury, who found the defendant guilty on all three complaints.

The questions presented in various forms by the defendant's exceptions and argued before us are whether there was any evidence to warrant the findings that the defendant had violated the statutes as charged, and whether on their face, or as applied in these cases to the facts that could warrantably be found, the statutes underlying the three complaints are unconstitutional.

The defendant's contention that the statutes involved do not apply to her activities and those of Betty rests in general upon the argument that these statutes were aimed at the regulation of street trades of well known types commonly carried on by children for money, and that they were not intended to regulate the distribution without profit of religious publications by those who regard the spreading of their beliefs in this way as a command of God and hence

as a religious and moral duty. We are not convinced that this contention is sound. By way of caution we must remember that the trial judge might not have accepted as wholly true the testimony of the defendant and her witnesses as to their religious beliefs or as to the philanthropic character of their undertaking. But if he accepted it in full, we still think a finding was warranted that the law had been violated. It is no doubt true in a broad sense that the statutes were directed at the regulation of certain ordinary street trades. But this will not justify us in excluding from their operation acts that come within their literal terms and that may involve the very evils intended to be curbed. To do this would be to rewrite the statutes and to insert in them exceptions which the Legislature could have inserted if it had desired that such exceptions should exist. The acts of the defendant could well be found to fall within the literal terms of the statutes and within the allegations of the complaints. Section 69, as amended, contains no exception as to religious magazines. Its words are "any newspapers, magazines, periodicals or any other articles of merchandise of any description." The judge could find that if a passerby should hand over five cents in accordance with the sign on the bag and should receive a magazine in return, a sale would be effected. The judge was not required to accept the defendant's characterization of that transaction as a "contribution." He could believe that selling the literature played a more prominent part in the enterprise than giving it away. He could find that the defendant furnished the magazines to Betty, knowing that the latter intended to sell them, if she could, in violation of s. 69. There is nothing in that section that restricts its scope to selling with an ultimate net profit in view. There is nothing in any of the sections on which these complaints rest that requires an employment of the minor, in the sense in which the work employment is used in the law of master and servant, as a condition of criminal responsibility. The judge could find that the defendant permitted Betty to "work" in violation of s. 81. The "work" mentioned in s. 81, in so far as that section refers to s. 69, is the selling, exposing or offering for sale prohibited by s. 69, whether or

not that is carried on under a technical employment or for a wage. And, finally, we cannot say that the evils at which the statutes were directed attendant upon the selling by children of newspapers, magazines, periodicals, and other merchandise in streets and public places do not exist where the publications are of a religious nature. It seems apparent that they may or may not exist in particular instances according to the circumstances just as they may or may not exist in particular instances according to the circumstances where the selling is of publications of a secular nature. The defendant has called to our attention a number of decisions holding that variously worded statutes relating to peddlers and other vendors were not intended to apply to the activities of "Jehovah's witnesses." Perhaps of these cases the one nearest to the present case is *State* v. *Richardson*, 27 A. 2d 94 (N. H. 1942). But we cannot regard any of them as decisive of the true construction of our own statutes.

We are of opinion that these statutes as here construed do not infringe upon the constitutional guaranties of freedom of the press and of religion. Under our constitutional system freedom of the press and freedom of religion are rightly accorded a highly preferred position in the struggle of competing interests, but it does not follow that the channels through which these freedoms are exercised may not be affected and regulated in some degree by enactments under the constitutional powers of government designed to promote the public health, safety or welfare. The statutes under which these prosecutions are brought are derived from sections first enacted as part of St. 1913, c. 831. That statute was entitled "An Act to Regulate the Labor of Minors." Its title correctly indicates its content. It contains many sections obviously intended to protect children against hazardous occupations, to insure that they shall not be permitted to work in particular trades or processes or at hours considered detrimental to the health or morals of minors of various ages, and to secure proper school attendance. Certain sections are devoted to "Street Trades." These provisions belong to a type of legislation long regarded as within the duty of the State to protect the health, morals, and welfare of its people. Common-

wealth *v.* Hamilton Manuf. Co. 120 Mass. 383; Commonwealth *v.* Riley, 210 Mass. 387; affirmed, Riley *v.* Massachusetts, 232 U. S. 671. Commonwealth *v.* John T. Connor Co., 222 Mass. 299. Muller *v.* Oregon, 208 U. S. 412. There have been examples of such legislation in this Commonwealth for a century. See St. 1842, c. 60. We think that freedom of the press and of religion is subject to incidental regulation to the slight degree involved in the prohibition of the selling of religious literature in streets and public places by boys under twelve and girls under eighteen and in the further statutory provisions herein considered, which have been adopted as means of enforcing that prohibition. These cases are within the principle of such recent decisions as Commonwealth *v.* Pascone, 308 Mass. 591, 594-598, certiorari denied, 314 U. S. 641; Cox *v.* New Hampshire, 312 U. S. 569; Valentine *v.* Chrestensen, 316 U. S. 52; Manchester *v.* Leiby, 117 F. 2d 661, certiorari denied, 313 U. S. 562; and Busey *v.* District of Columbia, 129 F. 2d 24. Moreover, it would seem that the statutes as applied in the cases now before us are constitutional under all the opinions in Jones *v.* Opelika, 316 U. S. 584. The cases of Lovell *v.* Griffin, 303 U. S. 444, Hague *v.* Committee for Industrial Organization, 307 U. S. 496, Schneider *v.* State, 308 U. S. 147, and Cantwell *v.* Connecticut, 310 U. S. 296, upon which the defendant relies, seem to us distinguishable.

The defendant makes the further contention as to the first complaint (for refusing to give the attendance officer the name and age of Betty Simmons) that she is now to be punished for refusing to furnish evidence against herself. This contention requires examination. Article 12 of the Declaration of Rights of the Commonwealth provides in part that "No subject shall be held to answer for any crimes or offence, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself." In Emery's Case, 107 Mass. 172, at page 182, Mr. Justice Wells, speaking with the approval of all members of this court, said that the clause "or furnish evidence against himself" may be presumed to be intended to add something to the significance of that which precedes." He continued, "Aside from this consideration, and upon the language of the proposition

standing by itself, it is a reasonable construction to hold that it protects a person from being compelled to disclose the circumstances of his offence, the sources from which, or the means by which evidence of its commission, or of his connection with it, may be obtained, or made effectual for his conviction, without using his answers as direct admissions against him. For all practical purposes, such disclosures would have the effect to furnish evidence against the party making them. They might furnish the only means of discovering the names of those who could give evidence concerning the transactions, the instrument by which a crime was perpetrated, or even the *corpus delicti* itself." He added that "Both the reason upon which the rule is founded, and the terms in which it is expressed, forbid that it should be limited to confessions of guilt, or statements which may be proved, in subsequent prosecutions, as admissions of facts sought to be established therein." There was no evidence that the defendant was asked Betty's age. Plainly her conviction on the first complaint was based solely upon her refusal to disclose Betty's name. It might be argued that Betty's name in itself had no tendency to incriminate the defendant, and was not an element of proof in the prosecution against her. On the other hand, the course of the evidence at the trial, including Betty's own testimony, made it clear that she was a witness who could, if the defendant were guilty, testify to every single element of proof necessary to convict the defendant on the second and third complaints. Moreover, by the terms of the statute upon which the first complaint is based the right of the supervisor of attendance to compel the defendant to answer his question was predicated upon the assumption that the answer was "required for the proper enforcement of sections sixty to seventy-four, inclusive." Under the circumstances of this case an answer to the question would have furnished to the Commonwealth ready means for producing all the evidence required to convict the defendant upon the second and third complaints. The supervisor of attendance was in effect asking the defendant to help him secure the Commonwealth's principal witness in order to prosecute the defendant. If the defendant can be convicted for not answering such a question,

why could not a statute be enacted in effect requiring every person suspected of crime to furnish the police a list of all the witnesses whose testimony would convict him? We do not see how we can uphold the present conviction on the first complaint without overturning the construction of the Constitution given after careful consideration in Emery's case. We are not ready to take that step. People *v.* Argo, 237 Ill. 173. People *v.* Spain, 307 Ill. 283, 291. People *v.* Newmark, 312 Ill. 625, 632. State *v.* Farmer, 46 N. H. 200, 202. Counselman *v.* Hitchcock, 142 U. S. 547, 585.

The result here reached under the circumstances of this case does not mean that a witness can refuse to testify to every fact; harmless in itself, which by any possibility might in the course of further investigation lead to the discovery of other facts and so finally to the unearthing of some evidence having a tendency to incriminate him. This decision rests upon the facts of this case and upon the direct connection between the question asked and the securing of the evidence required to convict upon the second and third complaints, so that here if the defendant had answered it could truly have been said that she herself had helped to furnish the incriminating evidence.

It does not necessarily follow from what has been said that the duty of keeping records of, or of disclosing, certain specified acts, or of disclosing the mere identity, of the actor or of the instrumentality employed by him, imposed by certain statutes upon persons engaged in certain occupations or persons accepting licenses or others, where the duty is not dependent upon any criminal quality in the facts required to be recorded or disclosed, violates the Constitution. Thus statutes imposing a penalty upon the driver of a motor vehicle who goes away after an accident without making known his name and the number of his vehicle (see G. L. (Ter. Ed.) c. 90, s. 24, as amended) have been held not to require self incrimination. Ule *v.* State, 208 Ind. 255. Ex parte *v.* Kneedler, 243 Mo. 632. State *v.* Sterrin, 78 N. H. 220. People *v.* Rosenheimer, 209 N. Y. 115. See Commonwealth *v.* Horsfall, 213 Mass. 232; Opinion of the Justices, 271 Mass. 582, 595-596; United States v. Sullivan, 274 U. S. 259; United States *v.* Mulligan, 268 F. 893. It would be impracticable to attempt at this time a full discussion of the

possible distinctions. The subject is treated at large in Wigmore on Evidence, (3d ed.) ss. 2259c, 2259d.

The result is that the defendant's exceptions are sustained in the first case (under s. 79) and are overruled in the other cases.

So ordered.

A. A. Albert, for the defendant.

E. R. Drewing, District Attorney, & R. G. Clark, Jr., Assistant District Attorney, for the Commonwealth, submitted a brief.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1943

No. 98

SARAH PRINCE, *Appellant*

v.

COMMONWEALTH OF MASSACHUSETTS

APPEAL FROM THE SUPERIOR COURT OF MASSACHUSETTS
FOR THE COUNTY OF PLYMOUTH

APPELLANT'S BRIEF

HAYDEN C. COVINGTON
ALFRED A. ALBERT

Counsel for Appellant

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1943

No. 98

■

SARAH PRINCE
Appellant

v.

COMMONWEALTH OF MASSACHUSETTS

■

APPEAL FROM THE SUPERIOR COURT OF MASSACHUSETTS
FOR THE COUNTY OF PLYMOUTH

APPELLANT'S BRIEF

Opinion Below

The opinion of the Supreme Judicial Court of Massachusetts is reported in 313 Mass., 46 N. E. 2d 755. It appears in the record. (37-44)

Jurisdiction

On February 15, 1943 the Massachusetts Supreme Judicial Court overruled appellant's exceptions. On May 14, 1943 appellant duly applied for appeal to this court. The application was timely granted pursuant to Section 237 (a) of the Judicial Code [28 U S C 344 (a)].*

* See also Act of Congress of January 31, 1928 Chapter 14, 45 Stat. 54, and the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, supporting jurisdiction of the court.

Questions Presented

The *fundamental* question to be answered by this Court is: Can the state, under the guise of its police power, prohibit public worship of Almighty God by a child under eighteen years of age and according to the dictates of its conscience, without violation of the First and Fourteenth Amendments to the United States Constitution, where the child's act of worship does not violate the law of morals, invade the property rights of others, constitute a breach of the public peace, harm the welfare of the child or produce any injury aimed at by the statute?

The *incidental* questions involved are:

(1) Did the courts below err in refusing to sustain appellant's motion to dismiss, motion for a directed finding and request for rulings in which it was urged that the statute as construed and applied abridges and denies appellant the right to educate, teach and direct the spiritual welfare of the child, to maintain a family and to discharge her moral obligations as personal guardian of said child, contrary to the First and Fourteenth Amendments to the United States Constitution?

(2) Did the courts below err in refusing to sustain appellant's motion to dismiss, motion for a directed finding and request for rulings in which it was urged that the statute as construed and applied abridges and denies appellant's and the child's freedoms to worship Almighty God and freedom of conscience contrary to the First and Fourteenth Amendents to the United States Constitution?

(3) Did the courts below err in refusing to sustain appellant's motion to dismiss, motion for a directed finding and request for rulings in which it was urged that the statute as construed and applied is unconstitutional because it abridges and denies appellant's and the child's privileges, rights and immunities secured by the Constitution in violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States?

Massachusetts Legislation Questioned

The validity of Sections 69, 80 and 81 of Chapter 149 of the General Laws of Massachusetts (Ter. Ed.), as amended by the Statutes of 1939, Chapter 461, Section 7, are drawn in question here. Among other things the sections provide:

> "No boy under twelve and no girl under eighteen shall sell, expose or offer for sale any newspapers, magazines, periodicals or any other articles of merchandise of any description, or exercise the trade of bootblack or scavenger, or any other trade, in any street or public place" [Section 69, as amended] [1]
>
> "Whoever furnishes or sells to any minor any aritcle of any description with the knowledge that the minor intends to sell such article in violation of any provision of sections sixty-nine to seventy-three, inclusive, or after having received written notice to this effect from any officer charged with the enforcement thereof, or knowingly procures or encourages any minor to violate any provisions of said sections, shall be punished by a fine of not less than ten nor more than two hundred dollars or by imprisonment for not more than two months, or both." [Section 80]
>
> "Any parent, guardian or custodian having a minor under his control who compels or permits such minor to work in violation of any provision of sections sixty to seventy-four, inclusive, or knowingly certifies to any materially false statement for the purpose of obtaining the illegal employment of such minor, shall for a first offence be punished by a fine

---

[1] Section 77 provides that ss. 69 to 73 shall be enforced by supervisors of attendance and police officers and vests the former with "full police powers for the purpose." Section 79 provides in part that any person "who refuses to give" to a "supervisor of attendance" and police officers "such information as may be required for the proper enforcement" of the act shall be guilty of an offense. Section 79 was declared to be unconstitutional by the Supreme Judicial Court. R. pp. 43-44.

of not less than two nor more than ten dollars or by imprisonment for not more than five days, or both; and for a subsequent offense by a fine of not less than five nor more than twenty-five dollars or by imprisonment for not more than ten days, or both." [Section 81] [2]

Construction Placed on the Statute by Court Below

The Supreme Judicial Court held that the statute was not confined in its application to "street trades of well known types commonly carried on by children for money" but that its terms also extended to prohibit activity "without profit" for the purpose of "spreading of their beliefs in this way as a command of God and hence as a religious and moral duty. . . . But if he accepted it in full, we still think a finding was warranted that the law had been violated." (R. 39, 40) "There is nothing in that section that restricts its scope to selling with an ultimate net profit in view." R. 40.

The court below also construed Section 81 of the statute so as not to require employment of a child to sustain a conviction. The court said: "The 'work' mentioned in s. 81, in so far as that section refers to s. 69, is the selling, exposing or offering for sale prohibited by s. 69, whether or not that is carried on under a technical employment or for a wage." R. 40-41.

History and Facts Showing Questions Presented

HISTORY

Appellant was charged by complaints filed in the District Court of Brockton with a violation of Sections 79, 80 and 81 of the Chapter in question. R. 1-2, 24-25. [3]

---

[2] These statutes are part of the *Child Labor Law* enacted in 1939 by the General Court and entitled "An Act to Regulate the Labor of Minors."

[3] Section 79 was declared unconstitutional. The complaint drawn thereunder is immaterial here and will not be referred to hereafter.

The complaint charging a violation of Section 80 alleged, *inter alia,*

> "did furnish to one Betty M. Simmons, a girl under the age of eighteen years, certain articles, to wit: magazines, she, the said Sarah Prince well knowing that the said Betty M. Simmons was to sell the said magazines unlawfully". [R. 1, 24]

The complaint charging a violation of Section 81 alleged, *inter alia,*

> "was the custodian of Betty M. Simmons, a minor, and did permit the said Betty M. Simmons to work contrary to law." [R. 1, 25]

In the District Court of Brockton appellant was tried, found guilty as charged and sentenced. She duly appealed to the Superior Court for Plymouth County. Upon her appeal she had a trial *de novo.* She pleaded not guilty to each complaint. A jury was waived. Evidence was received by the court. Appellant was again found guilty as charged. (R. 35) She was fined $10 under each complaint. R. 35.

FACTS

Sarah Prince is one of Jehovah's witnesses and an ordained minister. (R. 12, 18) She preaches the gospel of God's kingdom as the only hope for mankind. (R. 19) She has two young boys, Donald and William. (R. 16, 17) Also living with her is her niece, Betty M. Simmons. She has legal custody of the child. (R. 14) The children also are Jehovah's witnesses. R. 14, 16, 17.

As one of Jehovah's witnesses appellant appeared regularly each week on the streets of the business section of Brockton, Massachusetts to preach the gospel of God's Kingdom by public distribution of the *Watchtower* and

Consolation magazines. (R. 19) On the evening of December 18, 1941 at her home she prepared to engage in the public street distribution of the magazines. Altough she permitted the children to engage in the preaching activity on the streets during the daytime she ordinarily did not take them with her at nighttime. That particular evening the children asked permission to go with her. She said "No." They cried to go. Betty M. Simmons asked for a magazine bag and the magazines and Sarah Prince gave them to her. She took the children with her and permitted them to engage in the preaching work with her upon the sidewalks in downtown Brockton. R. 14, 17, 18.

Appellant and Betty Simmons took their positions near the corner curb of Legion Parkway and Main Street in Brockton. (R. 14, 18) Betty was standing on the same sidewalk about twenty feet from Sarah Prince. R. 15.

Betty was holding up in her hand so that passing pedestrians could see, copies of the *Watchtower* and *Consolation* magazines, which were in a cellophane protective cover. Suspended from her shoulder was a canvas magazine bag. On the bag in bold type was printed "Watchtower and Consolation 5c per copy" (R. 15, 21) Betty Simmons said that she was doing this work because she loved "the Lord and He commands us to" do it. She declared that it was her way of worshiping Almighty God. She said she was not "selling" the magazines but was taking contributions of five cents per copy for both magazines, and that if the people contributed more she would receive it. This particular evening she did not receive any contributions and did not distribute any magazines. Neither did the appellant. (R. 14, 18) On other occasions, while engaged in the same work, she had received contributions and had given away free of charge copies of the magazines. (R. 14) That when contributions were received she turned them over to her aunt, the appellant. (R. 14) All contributions turned over to appellant and received by appellant were delivered to Roger Flint the company servant for

Jehovah's witnesses in Brockton. (R. 18-19) Appellant would receive more magazines for distribution. If she had no money or received no contributions she could obtain the magazines anyway. R. 19.

While appellant and the children were thus working upon the sidewalks they were approached by George S. Perkins, the Supervisor of Attendance of the Public Schools of Brockton. He had a discussion with Sarah Prince about Betty Simmons. Appellant and the child refused to disclose Betty's name to him upon his demand. Mrs. Prince told him that Betty attended the Shaw School in Brockton. (R. 14, 16) Perkins reminded Mrs. Prince that he had warned her about a year previous concerning her permitting her two sons, Donald and William, to engage in the "selling" of "the magazines". He also told her that on a prior occasion he had discussed the law with her and even let her read the law. (R. 16, 17) He also said he had written a letter to her explaining the law. (R. 17, 20-21) Mrs. Prince told him that the children had cried and she brought them with her. (R. 14, 18) He did not obtain, buy or make a contribution for a magazine. He did not see appellant or the girl sell any magazine. He did not know what was done with the contributions received by them for the magazines. (R. 17) Sarah Prince admitted to him that she furnished the magazines to the girl and said to him, "And neither you nor anybody else can stop me". (R. 15) She told him that "this child is exercising her God-given right and her constitutional right to preach the gospel, and no creature has a right to interfere with God's commands." R. 20.

This conversation between Mrs. Prince and Mr. Perkins took place about twenty minutes before nine o'clock that evening. (R. 19, 20) Perkins said he would give her five minutes to get off the street. She said five minutes was all she needed. She pointed out that other children were with their parents walking along the sidewalk at the time shopping. Then she queried: "So, why bother me." (R. 20)

She and the children stopped their preaching activity at 8:45 p. m. As they were leaving they met Roger Flint, the company servant. At that point Perkins returned and broke into the conversation. He attempted to argue with Mrs. Prince. She said: "I'm not going through this any more. We've been through it time and time again. I'm going home and put the little girl to bed." She left Mr. Perkins and Mr. Flint speaking together about the matter. R. 20.

Appellant said that she had been preaching as an ordained minister for about five years. There was received in evidence a certificate issued by the Watchtower Bible and Tract Society stating, *inter alia*, that she was ordained and "fully consecrated to do the will of Almighty God and obey his commandments laid down in the Bible". She relied upon the same authority for her ordination as did Christ Jesus which is Isaiah 61:1, 2, where it is written: "The spirit of Jehovah God is upon me because Jehovah has anointed me to preach good tidings unto the meek; he hath sent me to bind up the broken hearted, to proclaim liberty to the captives and the opening of the prisons to them that are bound; to proclaim the acceptable year of our Lord, the day of vengeance of our God, and to comfort all that mourn." It is shown that the name *Jehovah's witnesses* is a proper name for all true Christians; for Isaiah 43:10-12 states: "Ye are my witnesses, saith Jehovah, that I am God; . . . I have declared and saved and showed when there was no strange god among you, therefore ye are my witnesses, saith Jehovah, that I am God." R. 18.

Sarah Prince testified that Jehovah God was using the society and His witnesses to divide the people, 'sheep from goats', to warn the people of good will and show them the way of safety and refuge under His kingdom. (R. 19) She further said that Jehovah "has commanded the people to come out of the religions, Catholic, Protestant, Jew or Gentile. That is the first thing that is going down, and all who are in with religion will perish with religion. It is on its

last skids now. That is why we are on the street corners. Christianity will survive, not religion. The destruction of the wicked at that time will be tremendous, far exceeding anything in human history. The nations of Christendom are forgetters of God. His name has been blasphemed and reproached down through the ages. But He says, 'They shall know that I am Jehovah'. For no other reason was I on the street corner, and my children, but to tell the people of the one place of safety, that is in the kingdom of God under Christ that we have prayed for." R. 19, 21.

Roger M. Flint testified that he gave the literature to Mrs. Prince in return for the contribution received, which was a small amount to help cover cost of printing other like literature. The money received was sent by him to the Society to print additional literature. It was shown that Flint received no profit from these receipts. He said: "It is a Christian work, a charitable work. Jehovah's witnesses lose much money getting this message to people of good will. God has commanded us to go to the people. At Matthew 24: 14 it is written, 'And this gospel of the kingdom shall be preached in all the world for a witness unto all nations; and then shall the end come.' It is our privilege in obedience to the Lord's commandments to faithfully obey him without any profit whatsoever." R. 21.

How Federal Questions Raised

At the start of the trial appellant filed and urged a motion to dismiss the complaints. (R. 3, 29, 35) This was overruled and exception allowed. (R. 5, 31, 35) At the conclusion of the Commonwealth's evidence appellant renewed her motion to dismiss the complaints and presented a motion for direct finding. (R. 5, 5-6) The court declined to rule on this motion. (R. 6) At the conclusion of all evidence, appellant renewed her motions to dismiss and for a direct finding. They were overruled and exception allowed. (R. 7, 35) At the close of the evidence appellant

presented her requests for rulings. (R. 7-8) They were all denied with exceptions to the appellant. R. 9, 10.

Under grounds two through six inclusive of the motion to dismiss and motion for directed finding, and also under the thirteenth request for ruling, appellant attacked the statutes on the grounds that as construed and applied they abridged the right of the child and appellant to worship Almighty God according to the dictates of their consciences as directed by Jehovah, their rights to freedom of speech and press, and that the statutes placed the child in an unreasonable and arbitrary classification, all contrary to the First and Fourteenth Amendments to the United States Constitution. R. 3-4, 29-30; 5-6, 31-32; 8-9, 34-35.

The Supreme Judicial Court considered each ground urged upon the exceptions taken to the rulings of the Superior Court and overruled the appellant's contentions. (R. 39, 44) The court below held that as construed and applied the statutes did not abridge the rights of the child or appellant contrary to the federal Constitution. (R. 41-42) Thereby the validity of the statute was sustained as applied to appellant in every respect by the Supreme Judicial Court of Massachusetts. R. 41-42.

Specification of Errors to be Urged

Appellant intends to urge that the Supreme Judicial Court erred in failing to hold that the Superior Court committed reversible error in overruling

1) Appellant's Motions to Dismiss and/or Quash the complaints filed in these cases.

2) Appellant's Motions to Dismiss and/or Quash the complaint filed in these cases at the close of all the evidence.

3) Appellant's Motion for Directed Findings filed in these cases at the close of all the evidence.

4) Appellant's thirteenth request for ruling wherein appellant asked the court to find the statutes unconstitutional for the reasons stated above.

PRELIMINARY REMARKS

The statutes in question are a part of the social legislation planned and enacted in the various states of the Union to prevent the exploitation of children in the ordinary trades, jobs and enterprises of commerce, including properly the newspaper industry. The purpose of the legislation is to protect children from economic exploitation and keep them from the evils of such enterprises that contribute to the degradation of children. The statutes are restrictive measures. They were not designed to invade the realm of education and raising of children by parents or interfere with such efforts. The law is closely related to legislation which prohibits conduct contributing to the delinquency of children and truancy.

Juvenile delinquency and child labor are old problems with which mankind and governments have had to contend for centuries. Progress and enlightenment during the last century has enabled the benevolent persons and organizations to accomplish much in the field of child welfare. Every enlightened nation, state and community has not hesitated to enact legislation to restrict abuses of children, and prohibit exploitation. Only the mean and derelict person has opposed or attempted to circumvent such legislation.

Those who have espoused such worthy movements are alarmed at the ineffectiveness of such measures to stem the rising tide of juvenile delinquencies and child labor during this total war. This malady is directly attributable to breaking up of homes and family ties by total war. The increased participation by children in jobs and earning high wages has liberated many from family ties and parental restraint which have exposed many to drinking, gambling, undesirable places of entertainment and widespread immorality. These conditions are the evils which the delinquency and child labor laws are designed to curtail. They are here mentioned to emphasize the importance of protecting the family tie, which has been impaired here.

The facts in this case are not of the type that are found in the flood of child labor and delinquency cases that inundate the defense plant areas of the nation. The activity of the child and appellant was entirely foreign to any such evils. Their work was laudable, lofty, upright and to the benefit of mankind. There was no showing in the courts below that the work contributed to the injury of the child or the community. The activity did not cause the child to be truant, neglect her studies at school, impair her health or morals or interfere with her school life. There is nothing in the record to indicate that any of the evils the statute was designed to prevent existed in this case. The record *refutes* any such contention. Neither is it contended that there was a commercial exploitation of the child. Admittedly there was no employment of the child to engage in work or child labor as those terms are ordinarily understood and defined.

In a democracy the children are not considered as the wards of the state. (*Pierce* v. *Society of Sisters*, 268 U. S. 510) It is a totalitarian precept that children are the exclusive property of the state and that parents are only animal agencies to bring the children into existence for the benefit of the state. "The success of democratic institutions is measured, not by extent of territory, financial power, machines, or armaments, but by the desires, the hopes, and the deep-lying satisfactions of the individual men, women, and children who make up its citizenship." [4] "While the individual is becoming less significant as a unit in our elaborate system of production and distribution, his worth and integrity remain the cornerstone of our democratic philosophy. . . . In educating our children we desire, therefore, to give them freedom to express their natural interests, to enjoy life, and to gain that self-reliance which

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[4] President Roosevelt to the White House Conference on Children in a Democracy, April 26, 1939. *Children In A Democracy*, Government Printing Office.

is hardly less important today than it was to the early American pioneer." [5]

Subject to right of the state to intervene in the case of an abuse of privilege, the parent's right of control over the children has been recognized as supreme under the common law, the Roman law and the law of Almighty God. Under the common law this right was held to be despotic until the child reached a certain age. The power has been relaxed considerably to meet the change of the times, but even today the law recognizes that the power of the parent or personal guardian or custodian during minority has not been abrogated. During minority the parent has control over the person and property of the children except such property as is held in trust. Universally the father may restrain the liberty of children and even administer corporal punishment and the state cannot intervene or interfere by statute or otherwise unless such chastisement is excessive or cruel. Until quite recently the father had the power to bind out his sons as apprentices and, though this right has been generally discontinued by custom, the father is still entitled under the law to the earnings of his minor child so long as the child remains at home and has not been emancipated. The issuance of licenses to marry in cases of minors is generally forbidden unless parental consent has been given and marriages without such consent are voidable at the instance of the parent and as to certain legally defined ages some marriages are absolute nullities. With this power to the parent or guardian goes the obligation, enforceable by law, to support, maintain, educate and provide for the needs of minor children. However, the right of the parent is not absolute and is subject to some restraints. The parent or guardian does not have a property right in the child.

The Court is well aware of these legal obligations and relationships but they are mentioned for the purpose of

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[5] Op. cit. p. 2, 3.

showing that the state does not have absolute control and that the parent does not derive his authority over the children by virtue of any grant or allowance from the State, but that such powers of control over children have been recognized as fundamental personal rights of each citizen. These rights are inherent and are secured by the federal Constitution against abridgment by the state.

It is especially true that in the field of religious beliefs and practices the education of the child by the parent in the Bible is the highest attainment of the democratic institution, and the state is shorn of all power and authority to regulate, intervene or interfere with it. The state cannot prohibit the worship, service or Christian practices of the child as directed by the parent so long as such do not involve a violation of the law of morals or break out into overt acts against the peace and safety of the State and nation. It must be conceded that there is no abuse of parental authority here. There is no contention that appellant has abused her rights as custodian of the child to such a degree that the law has severed the relationship between her and the child, so as to make it a ward of the state. The state does not contend that appellant placed the child upon the streets to beg for selfish gain of appellant. It is not contended that appellant was neglectful of her parental duties and did not properly provide for Betty Simmons, or abandoned her.

Only lately has this Court announced the strict limitation on the powers of government to interfere with matters of this sort:

"If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.... If there are any circumstances which permit an exception, they do not now occur to us."—*West Virginia State Board of Education* v. *Barnette*, 319 U. S. , 63 S. Ct. 1178.

Paradoxically the result of the prosecutions here is to

accomplish directly an evil which the statute was designed to prohibit, to wit, break up the family relationship between appellant and the child and prevent their continuing to worship God according to dictates of their consciences. Though it was contended in the courts below that this statute was never intended by the law makers to accomplish this result, the Supreme Judicial Court of Massachusetts has declared that the General Court did so intend. The problem of this court then is to determine whether such construction and application of the statute brings it into collision with the federal Constitution.

Points for Argument

ONE

As construed and applied the statute is unconstitutional because it abridges and denies appellant's right to educate, teach and direct the spiritual welfare of the child, to maintain a family and to discharge her moral obligations as personal guardian of said child and the child is denied the right to the benefits of such relationship, all contrary to the First and Fourteenth Amendments to the United States Constitution.

TWO

As construed and applied the statute is unconstitutional because it abridges and denies appellant's and the child's freedom to worship Almighty God according to the commands of Jehovah and their freedom of conscience contrary to the First and Fourteenth Amendments to the United States Constitution.

THREE

As construed and applied the statute is unconstitutional because it abridges and denies appellant's and the child's privileges, rights and immunities secured by the Constitution in violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution.

ARGUMENT

ONE

As construed and applied the statute is unconstitutional because it abridges and denies appellant's right to educate, teach and direct the spiritual welfare of the child, to maintain a family and to discharge her moral obligations as personal guardian of said child and the child is denied the right to the benefits of such relationship, all contrary to the First and Fourteenth Amendments to the United States Constitution.

The prosecution of appellant through misapplication of the statute is a step toward destroying one of the oldest and fundamental institutions of society, namely, the family. The family is the backbone of all orderly governments. It is to democracy what blood is to the human body. Drain away the warm family relationship and substitute the cold foster-parental care of the government and democracy will perish as surely as will the body when the blood ceases to circulate. If the individual in a democracy is to retain his integrity the family relations must not be impaired by misapplied laws. The strength of the nation depends upon the security of the family and family life. "No more important task faces the American community today than that of maintaining its homes. The health and happiness of children, the guidance of youth, the security of families

must be guarded from impairment in wartime so that the well-being of this nation is assured." [5]

It must beconceded that in a democracy the family is the primary force and the socializing agency through which the child acquires most of moral, social and cultural values. The family and home are institutions in their own right. They do not depend upon government for their creation. Long before organized government was established these institutions prevailed to secure the perpetuation of humanity. They are fundamental, and are as much a part of personal rights guaranteed by the Constitution as the *Bill of Rights* is a part of the Constitution.

In *Meyer* v. *Nebraska,* 262 U. S. 390, this court declared that the liberties secured by the federal compact were not merely freedoms from bodily restraint; but that there was secured the right to engage in the common occupations of life, to marry, establish a home and bring up children. It was said that the citizen is protected in the enjoyment of those privileges long recognized at common law as essential to the orderly pursuit of happiness by freemen. *Berea College* v. *Kentucky,* 211 U. S. 45, 47; *Allgeyer* v. *Louisiana,* 165 U. S. 578, 589. Marriage and childbearing is God's arrangement for all humankind that shall live on the earth. It is beyond the power of the state to interfere with or abridge the right of all persons within its boundary to procreate. Even this right cannot be denied to criminals. *Skinner* v. *Oklahoma,* 316 U. S. 535. By stronger force of reason the state cannot interfere with and abridge the parents' right to bring up children in a way acceptable to their own judgment so long as it is not inimical to the welfare of the children or the well-defined interest of the state.

The home, family, parents and guardians are the centers of security, hope and love of every child. The safety and protection of the home and family are the centers of what

[5] Franklin D. Roosevelt, March 29, 1943 in letter to Dr. Harry C. Munro, Secretary of The Committee on National Family Week.

the fighting men of democracies at the battle fronts fight for. Those at home attempting to preserve the heritage contribute to the morale of the people and the war effort.

The giving of food, shelter and material security is not the only task of the family. Less conspicuous, but more important by far, is what the child acquires through the family in regard to his relations with other persons. From the parent or guardian the child learns to walk, talk, live and form conceptions of ethical and moral values. The parent in the home is the divinely appointed teacher of the child. The home is the first school attended by the child, the school of all schools and for which no substitute can be found. The family has the first responsibility for the care of children: the child holds first place and primary concern in every family.

It is plain that the self-sufficiency, self-respect, initiative, enterprise, self-reliance, proper respect for others and a cooperative attitude in children of a democracy cannot be attained by the misapplication of child labor laws against parents who are honesly endeavoring to set examples of right conduct for their children. On the contrary such virtues sought in children are destroyed by the branding of the parent as a criminal abuser of his rights; and this is especially true, when, as here, there is no evidence of abuse of the right by the guardian. The state, the civil authority, in a democracy has the duty to protect and conserve the parental authority over children and refrain from an overt acts or moves against the parent or guardian because of their efforts to provide constructive influence over the children.

The misconstruction and misapplication of the statute in question by the court below has pushed child labor legislation into a field where it has no authority to roam. Such legislation is confined to commercial exploitation of children for gain. The law, like delinquency laws affecting children's conduct, is limited to harmful abuses of the child. When these laws are expanded into the domain of parental control,

freedom of worship, parental discipline, family life and right practice they are immediately brought into collision with the constitutional shiled of protection of these fundamental rights. The 'rod of the state cannot rest on the lot of righeous teachings and practices' of the family and its members in a democracy.

Like any other constitutional right this right of bringing forth children, maintaining a family and directing the education of the little ones is not absolute. The State can intervene when and only when there is an abuse by the parent or guardian in the exercise of the right, duty and privilege of controlling the child. There must be a positive showing that the parent's manner of exercising control over the child is an abuse which so greatly jeopardizes the welfare of the child as to require intervention on the part of the State to sever the relation between the guardian and child and declare the child a ward of the state. It must be conceded that there is no such abuse of the parental control in this case as would justify an invasion on the part of the Commonwealth of Massachusetts.

If the doctrine contended for by Massachusetts be sustained then family relationships in that state will no longer be secure. The principle can be extended so as to allow children to be pulled away from their mother's breast by legislative fiat of the commonwealth and the child denied the nurture, comfort and admonition of parents and the warmth of fatherly and motherly instructions in all matters of human affairs and life on the grounds that the manner of bringing the children up did not conform to the orthodox, conventional and prevailing practices of the majority of parents in the commonwealth.

In the United States there can be no standardized, regimented and fixed ways of home life for children. The entire population which gives support to the governments, state and federal, is a heterogeneous mass. Theodore Roosevelt properly described the country as a 'polyglot boarding house'. The differences in the social, religious, political,

personal, educational life can be held together in one container; but, like oil and water, they are unmixable by legislative fiat or decree. The personal and private practices of one group find no interest or comparison with another. What is joy to one is sorrow to another. There can be no measuring rod for such vital matters. And the people have only one common denominator that supports the government under the Constitution, namely, the liberties guaranteed by the Bill of Rights.

A clear perception of the foregoing factors in the life of the people of these United States leads one to the inescapable conclusion that the police power of the state touching the family corpuscle of the democratic "body" is limited to *abuses* thereof which cause sickness of the body.

"The police [power] of a State, in a comprehensive sense, embraces its whole system of internal regulation, by which the State seeks not only to preserve the public order and to prevent offenses against the State, but also to establish for the intercourse of citizens with citizens those rules of good manners and good neighborhood which are calculated to prevent a conflict of rights, and to insure to each the uninterrupted enjoyment of his own so far as is reasonably consistent with a like enjoyment of rights by others."[6]

Chief Justice Shaw of the Supreme Judicial Court of Massachusetts said: "The power we allude to is rather the police power; the power vested in the legislature by the constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the Commonwealth, and of the subjects of the same. *It is much easier to perceive and realize the existence and sources of this power than to mark its boundaries, or prescribe limits to its exercise.*"[7] [Italics added]

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[6] Cooley, *Constitutional Limitations*, 8th Ed., p. 1223.
[7] *Commonwealth* v. *Alger*, 7 Cush. 53, 84.

The police power is not supreme and is not unlimited. It is subject to the limitations imposed by the Federal Constitution upon every power of government. It will not be suffered to invade or impair the fundamental liberties of the citizen.[8]

The court below leaned heavily upon the doctrine of 'presumption of constitutionality of legislation' as a refuge from the constitutional assault against the illegal and unconstitutional mis-application of the statute in this case. The appellant here does not dispute the verity of this well established doctrine. However, it is asserted with emphasis, that when a statute enacted under the police power of the State either on its face or constructively abridges, prohibits, or infringes any of the freedoms guaranteed by the First Amendment to the Constitution, such ordinance is *presumptively invalid* and the burden falls on the authority asserting the police power to prove by a preponderance of the evidence that the statute is a valid exercise of the police power directed at some ABUSE of the constitutional rights which, unless prohibited or regulated, would constitute a *clear and present danger* to the health, safety or general security of the community as a whole. The showing of the *abuse* is a condition precedent to the exercise of the police power where such exercise of power has a tendency to limit, infringe, restrict or prohibit any of the constitutional freedoms. The police power does not even exist in such cases unless there is a clear showing of the *abuse*. This rule is well stated by Chief Justice Hughes in *De Jonge* v. *Oregon*, 299 U. S. 353 (1937): "The people through their legislatures may protect themselves against that abuse. But the legislative intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed. . . . Therein lies the security of the republic, the very foundation of constitutional government."

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[8] *Jacobson* v. *Massachusetts*, 197 U. S. 11; Cooley, *Constitutional Limitations*, 8th Ed., p. 1299.

This same rule was effectively applied by the United States Court of Appeals for the District of Columbia in *Busey* v. *District of Columbia,* decided November 8, 1943. In that case an occupational license tax was sought to be applied to the activity of Jehovah's witnesses. The controversy reached this Court last term after the precedent case of *Murdock* v. *Pennsylvania,* 319 U. S. 105, had been decided. This Court remanded the case to the Court of Appeals for further consideration. (319 U. S. —, 63 S. Ct. 1277) Upon reconsideration, Mr. Justice Edgerton, speaking for the court, held: "Freedoms of speech, press, and religion are entitled to a preferred constitutional position because they are 'of the very essence of a scheme of ordered liberty.' (*Palko* v. *Connecticut,* 302 U. S. 319, 325) They are essential not only to the persons or groups directly concerned but to the entire community. Our whole political and social system depends upon them. Any interference with them is not only an abuse but an obstacle to the correction of other abuses. (Civil liberties are at present relatively little threatened by governmental action, but in many communities the civil liberties of unpopular groups are greatly threatened by private terrorism. Legal recognition of these liberties tends to discourage this terrorism.) . . .

"We think we may now hold that when legislation appears on its face to affect the use of speech, press, or religion, and when its validity depends upon the existence of facts which are not proved, their existence should not be presumed; at least when their existence is hardly more probable than improbable, and particularly when proof concerning them is more readily available to the government than to the citizen. *The burden of proof in such a case should be upon those who deny that these freedoms are invaded.* . . . No presumption which lacks a probable basis in fact should be permitted to conceal an interference with essential freedoms." [Italics added]

The Commonwealth and the court below have wholly

failed to discharge the burden placed upon the appellee to show an abuse of the parental prerogative or clear and present danger of the evil resulting from the activity in question.

This court has repeatedly held that presumptions and legislative preferences respecting matters of public convenience supporting application of statutes to "other personal activities" do not justify application thereof to the exercise of the fundamental personal rights protected by the Bill of Rights. *Schneider* v. *State*, 308 U. S. 147, 161, 162; *Lovell* v. *Griffin*, 303 U. S. 444, 452. The police power of a state to abridge the fundamental personal rights is the exception rather than the rule. The findings of the legislative branch as to evils and dangers are not conclusive and binding upon the court. The judgment of the legislature is not unfettered. *Herndon* v. *Lowry*, 301 U. S. 242. The broad scope of presumption of constitutionality relied upon by the court below has been greatly narrowed by a showing that the facts to which the statute has been applied are shielded by the First Amendment, and that the conviction cannot be sustained without positive proof of abuse, injury or evil of serious proportions. *United States* v. *Carolene Prod. Co.*, 304 U. S. 144, 152; *Stromberg* v. *California*, 283 U. S. 359, 369-370.

An honest examination of the opinion of the court below will show that the tried and proved rules of law above mentioned have been discarded for an anomalous theory. If sustained, the effect of this decision would be that a high and almost impregnable wall would be built around all statutes turned out by the legislatures. Citizens prosecuted under these statutes would soon discover that the constitutional rights they have always regarded as being secure, above and beyond the power of legislative abrogation, would not be available to them until they were able to scale this wall of presumption by producing in court a preponderance of the evidence showing that these rights have been infringed by the statute. In a hard fought case this pre-

sumption in favor of the statute might well govern the conclusion of the case and the definition of the fundamental right. This is to put the most cherished possession of all Americans at a definite disadvantage. Henceforth citizens would be dragged into court with their freedoms held in their hand, so to speak, and if they were not strong enough to protect these freedoms from the grasp of the prosecution seeking to wrest them away, then liberty would die an untimely death right in the courtroom, which has heretofore been the arena for the protection of these rights. Weakened immeasurably by the presumption against the freedoms even before reaching the courtroom, these freedoms like so much sand would soon slide through the fingers of the much prosecuted citizenry, leaving the exalted police power supreme—as in Hitler's crumbling reich. If liberty is to be preserved and secured, then judicial presumptions must be in its favor and not, as here, in derogation of the cherished "four freedoms".

Until the commonwealth has discharged its duty, by proving a clear and present danger of substantial evils to the child from the activity which appellant permitted her to engage in, the conviction cannot be sustained. In holding that the clear and present danger test must be applied to police power abridgments of the liberties protected by the First Amendment this court in *Bridges* v. *California,* 314 U. S. 252, 262-263, 273, said:

> "Nevertheless, the 'clear and present danger' language of the *Schenck* case has afforded practical guidance in a great variety of cases in which the scope of constitutional proctections of freedom of expression was in issue. It has been utilized by either a majority or minority of this Court in passing upon the constitutionality of convictions under espionage acts, *Schenck* v. *United States,* supra; *Abrams* v. *United*

States, 250 U. S. 616; under a criminal syndicalism act, *Whitney* v. *California*, supra; under an 'anti-insurrection' act, *Herndon* v. *Lowry*, supra; and for breach of the peace at common law, *Cantwell* v. *Connecticut*, supra. And very recently we have also suggested that 'clear and present danger' is an appropriate guide in determining the constitutionality of restrictions upon expression where the substantive evil sought to be prevented by the restriction is destruction of life or property, or invasion of the right of privacy'. *Thornhill* v. *Alabama*, 310 U. S. 88, 105.

"Moreover, the likelihood, however great, that a substantive evil will result cannot alone justify a restriction upon freedom of speech or the press. The evil itself must be 'substantial', Brandeis, J., concurring in *Whitney* v. *California*, supra, 274 U. S. at 374; it must be 'serious', id. 376. And even the expression of 'legislative preferences or beliefs' cannot transform minor matters of public inconvenience or annoyance into substantive evils of sufficient weight to warrant the curtailment of liberty of expression. *Schneider* v. *State*, 308 U. S. 147, 161.

"What finally emerges from the 'clear and present danger' cases is a working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished. Those cases do not purport to mark the furthermost constitutional boundaries of protected expression, nor do we here. They do no more than recognize a minimum compulsion of the Bill of Rights. For the First Amendment does not speak

equivocally. It prohibits any law 'abridging the freedom of speech or of the press'. It must be taken as a command of the broadest scope that explicit language, read into the context of a liberty-loving society, will allow. . . .

"In accordance with what we have said on the 'clear and present danger' cases, neither 'inherent tendency' nor 'reasonable tendency' is enough to justify a restriction of free expression. But even if they were appropriate measures, we should find exaggeration in the use of those phrases to describe the facts here."

It is not contended that Betty Simmons was engaged in any more hazardous activity while in the custody and control of appellant than were the many children who were at the time on the public sidewalks of Brockton accompanying their parents or guardians while shopping, window-shopping, going to and from the theatre, etc. The Commonwealth does not urge that the child was unattended or abandoned by appellant upon the public streets. Indeed it could not so contend because of the record. The state does not urge that the activity caused the child not to be sociable with other children. It is not said that the child was truant from school or neglectful of studies. There is no showing that the activity of the child caused her to be stolid, intolerant or unresourceful. The activity did not in any way impair the education, morals, welfare, physical or mental capacity of the child nor did it adversely affect any interest of the state. The act of worshiping Almighty God and preaching, benevolent as it is to mankind, must be said to be more conducive to the well-being of a child than staying at home, accompanying parents to do shopping or any other activity. It cannot be argued that any of the baneful results aimed at by the statute will follow.

TWO

As construed and applied the statute is unconstitutional because it abridges and denies appellant's and the child's freedom to worship Almighty God according to the commands of Jehovah and their freedom of conscience contrary to the First and Fourteenth Amendments to the United States Constitution.

Since marriage and family relationships were founded by Almighty God for the human race it cannot be ignored that the institution is sacred. Necessarily instruction in the Word of God to children in the home by the parent is vitally necessary. Christianity is the inspiring and stabilizing force in family life and is essential for family welfare among all people of good will. It affords a sense of responsibility to God which forms an indispensable spiritual foundation of the family life. It lifts the home and family into a higher realm than that of a biological unit of society. It contributes commandments, rules and practices which direct the individual to everlasting life at the hands of the Creator, Jehovah God. It must be conceded that freedom of worship according to the dictates of conscience must be allowed each parent or guardian and each child in order that Christianity may accomplish the stabilizing of family life of the nation. Without education in Christianity family life is insecure.

The primary responsibility for the Christian education of the child rests upon the parents or guardian. In the family the child is first introduced to his heritage of worship as he is introduced to his mother tongue. In the discharge of teaching the child the Bible and bringing him up in the nurture and the admonition of Jehovah God the

foundation is laid for the moral standards that are designed to guide his conduct through life.[9] No authority higher than Jehovah God can be found. His authoritative words on the subject are: "And these words, which I command thee this day, shall be in thine heart: And thou shalt teach them diligently unto thy children, and shalt talk of them when thou sittest in thine house, and when thou walkest by the way, and when thou liest down, and when thou risest up. And thou shalt bind them for a sign upon thine hand, and they shall be as frontlets between thine eyes. And thou shalt write them upon the posts of thy house, and on thy gates."—Deuteronomy 6: 6-9.

This command to teach must be carried out constantly throughout the life of the child. The *Supreme Law* says: "Only take heed to thyself, and keep thy soul diligently, lest thou forget the things which thine eyes have seen, and lest they depart from thy heart all the days of thy life; but teach them thy sons, and thy sons' sons." —Deuteronomy 4: 9.

Although born imperfect and subject to the condemnation of death because of the Adamic transgression of God's law, the child is without guile and if properly taught, subjected to the proper environment and brought up in the nurture of the Lord, will have a better chance of receiving life everlasting than if such a child is not thus educated by his parents but is left to drift about the "dead sea" of human doctrines for himself. It is the natural instinct and predilection of a child to follow its parent or guardian in the worship of Almighty God. It has been estimated that approximately one-half of the children and youth in the United States receive no religious instruction.[10] President Roosevelt has said, "We are concerned about

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[9] See pp. 29-31 of *Children in a Democracy*, supra. See, also, Final Report of The White House Conference on Children in a Democracy, section on Education Through Religious Training, pp. 181-192.

[10] Estimate for 1926 of the Department of Research of the International Council of Religious Education.

the children who are outside the reach of religious influences and are denied help in attaining faith in an ordered universe and in the Fatherhood of God."[11]

It must be conceded that parents of the Protestant, Jewish and Catholic faiths have the constitutional right, without control or interference by the state, to teach their children at home their respective faiths; and also, to take their children to the respective *forums of worship* and there direct their children in the participation in religious ceremonies and practices. Their liberty is not confined to belief and opinion but extends to *practice* of their belief *in* such *forums*. Some young children are, quite early in life, dedicated and trained for ultimate entry into the ministry and the order of the priesthood of the various sects of the religions. Witness the schools, parochial schools, seminaries, monasteries, etc., of the various sects of "recognized" religions. In the various orthodox religious forums there are to be found altar boys, choir singers and other young children having part in the clerical activity of the church. No person would have the effrontery to argue that in any of such instances the state could intervene and prosecute the parents or clerics connected with such children's religious activity.

By double force of reason the state is precluded from the forum of public worship employed by Jehovah's witnesses for preaching of the gospel. The state cannot enter such forum and apply criminal laws against parents or guardians of the children found in such forums practicing what they preach by publishing the message of God's kingdom as the only hope for those who will hear. This court has time and again declared that the public streets are a proper forum for the performance of the public preaching of the gospel by Jehovah's witnesses.[12]

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[11] See page 30, *Children in a Democracy*.

[12] *Cantwell* v. *Connecticut*, 310 U. S. 296; *Jamison* v. *Texas*, 318 U. S. 413; see also *Hague* v. *C. I. O.*, 307 U. S. 496; *Schneider* v. *State*, 308 U. S. 147.

In those cases the court has held that the preaching activity of Jehovah's witnesses cannot be prohibited in such places. Here the court below has permitted an absolute prohibition of such preaching activity by all of Jehovah's witnesses who are females under the age of eighteen and all males under the age of twelve. This prohibition cannot be permitted to stand because it is contrary to the Constitution. *Jamison* v. *Texas*, 318 U. S. 413.[13]

It is plain that the process of education of a child in the commandments of God does not stop with the teaching of the Bible in the home. It is the further duty to bring such children to congregations where the Word of God is studied and the children be permitted to participate in discussions that they might enlighten their minds and renew their memory. The apostle Paul said: "Not forsaking the assembling of ourselves together, as the manner of some is; but exhorting one another: and so much the more, as ye see the day approaching." (Hebrews 10: 25) To Timothy he wrote, *inter alia*, "Study to shew thyself approved unto God, a workman that needeth not to be ashamed, rightly dividing the word of truth."—2 Timothy 2: 15.

The duty of one of Jehovah's witnesses, who is a parent or guardian, does not terminate with instruction. If the young witness of Jehovah indicates a willingness to do the will of God and prove before all men that he is one of Jehovah's witnesses also by going forth and publicly preaching upon the streets or from house to house in the same manner as does his parent or guardian, the parent is under the obligation to aid the child in taking the necessary step. By doing the overt act of preaching the gospel to others the child shows he is a witness for Jehovah God. A parent thus obligated as one of Jehovah's witnesses would be provoking the child unto wrath by permitting the child to refrain from performing covenant obligations.

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[13] See also *Thornhill* v. *Alabama*, 310 U. S. 88; *Carlson* v. *California*, 310 U. S. 106.

"And, ye fathers, provoke not your children to wrath; but bring them up in the nurture and admonition of the Lord." (Ephesians 6:4) "Children, obey your parents in the Lord; for this is right. Honour thy father and mother, which is the first commandment with promise, that it may be well with thee, and thou mayest live long on the earth." —Ephesians 6:1-3.

To permit the child to have a knowledge of God's law and to refrain from obeying His commandments by practicing right through preaching is wrong. "For as the body without the spirit is dead, so faith without works is dead also." (James 2:26) "Let your light so shine before men, that they may see your good works, and glorify your Father which is in heaven." (Matthew 5:15, 16) Whether young or old, one who claims to be a witness for Jehovah God must practice what he preaches. This the appellant and the child have done. By their conduct the child has said: "I delight to do thy will, O my God." (Psalm 40:8) "My tongue shall speak of thy word; for all thy commandments are righteousness."—Psalm 119:172.

It cannot be said that the chiild is too young to be permitted thus to worship and serve Jehovah God. The state has no authority to tell a child at what age it can begin practicing the requirements of Almighty God taught it by the parent. Thus to allow the state to intervene would forever destroy the inalienable American heritage of raising children and maintaining a home. In answer to the contention that he could not speak, a youthful prophet of Jehovah explained why he could not fail to speak. "But his word was in mine heart as a burning fire shut up in my bones, and I was weary with forbearing, and I could not stay." (Jeremiah 20:9) The God-inspired passions of a child cannot be muzzled or curtailed.

From scriptural perspective of the matter it is plain that there is no age limitation upon worship or preaching the gospel. When commanded by Jehovah to preach the judgments against the unfaithful the prophet Jeremiah

answered: "Then said I, Ah, Lord God! Behold, I cannot speak: for I am a child. But the Lord said unto me, Say not, I am a child: for thou shalt go to all that I shall send thee, and whatsoever I command thee thou shalt speak." (Jeremiah 1:6, 7) Jehovah declares that He ordained Jeremiah before he was born and sanctified him while yet in his mother's womb.—Jeremiah 1:7.

The psalmist David, who started out early in life as a fighter and minister of God and who as a child was anointed to succeed King Saul, said: "Out of the mouth of babes and sucklings hast thou ordained strength because of thine enemies; that thou mightest still the enemy and the avenger." (Psalm 8:2) Christ Jesus quoted from this scripture when He rebuked the religious scribes and Pharisees who complained about the children following His teachings. (Matthew 21:15, 16) When the disciples complained that children were too young to permit them to talk with and follow Christ Jesus the Master rebuked them and said: "Suffer little children to come unto me, and forbid them not: for of such is the kingdom of God."—Luke 18:16.[14]

When Jesus was only twelve years of age and preached as one of Jehovah's witnesses in the temple, He confounded the wise men and astonished them with His wisdom and answers. (Luke 2:46, 47) The favorite friend and companion of the apostle Paul was Timothy, ordained a minister long before he reached the age of maturity, taught and preached while yet a very small child, publicly and from house to house. (Acts 16:1-3) The capacity of Timothy to preach was questioned and Paul wrote to 'his son of faith' thus: "Let no man despise thy youth; but be thou an example of the believers, in word, in conversation [conduct], in charity, in spirit, in faith, in purity." —1 Timothy 4:12, bracketed word added.

The prophet Samuel when very young was conse-

[14] Matthew 18:2-7 where Jesus said: "But whoso shall offend one of these little ones which believe in me, it were better for him that a millstone were hanged about his neck, and that he were drowned in the depth of the sea."

crated to the service of the Lord and turned over to the priest Eli by his mother, Hannah, to perform temple service and act as a minister of Almighty God. (1 Samuel 1:24; 2:11, 28) Jehovah God declares: "Now therefore hearken unto me, O ye children: for blessed are they that keep my ways." (Proverbs 8:32) David counsels: "Both young men, and maidens; old men and children: Let them praise the name of Jehovah; for his name alone is excellent; his glory is above the earth and heaven."—Psalm 148:12, 13.[15]

It is apparent that there is no scriptural argument to support the contention that it is improper for a child of tender years to accompany its parent or guardian in preaching activity or worship. Such contention is plainly unscriptural. The popular opinion that children should not preach comes from the specious prevailing orthodox view that the clergy are the sole custodians of an understanding of the Bible and that an ability to teach it to others is esoteric.[16] Contributing also to this notion of error is the universal practice of parents delegating their non-transferrable duty of teaching the Bible to their children at home to so-called Sunday Schools from which they are never graduated.

Unnecessary it is to argue to this court any more that the activity of Jehovah's witnesses constitutes preaching of the gospel carrying the right to protection under the shield of the First Amendment securing freedom of religion. This court has so declared.[17]

If this activity is secured to Jehovah's witnesses who

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[15] See also 2 Kings 5:1-4; 2 Chronicles 24:1-4; 34:1-4.

[16] "God created man in His image and from that time hence man has been busy creating God in his image and prescribing dogmas and rituals by which God may be worshiped. The authors of the Federal Constitution knew how prone men are to impose their religious beliefs upon their brethren and to tolerate no other form of worshiping God except their own. Therefore, in their wisdom they wrote in the First Amendment, . . ." —Judge Sims, Ratliff and Tilford of the Court of Appeals of Kentucky specially concurring in *Steevers v. Somerset* (Ky.), a case involving Jehovah's witnesses, decided October 29, 1943.

[17] *Largent* v. *Texas*, 318 U.S. 418; *Murdock* v. *Pennsylvania*, 319 U.S. 105; *Jones* v. *Opelika*, 319 U.S. 103; *Cantwell* v. *Connecticut*, 310 U.S. 296.

are *adults* there is no reason why the bulwark of the Constitution does not protect also a *child* who is one of Jehovah's witnesses, following his parents.

One of the principal slogans of the United Nations during this total war is "freedom from want". Another is "freedom from fear". These are claimed as the heritages of the children now on earth and those yet to come. These heritages must be for all children, regardless of race, color or creed. The foundation of these birthrights is freedom of worship. Unless this freedom is granted to meet the needs of every conscience there cannot be a realization of freedom from want and freedom from fear. To deny, under guise of law, these privileges to a mother and her child, or guardian and ward, because of their way of worship, does not speak well of the ones entrusted with the people's government and liberties in this land. Such course does not contribute greatly to the war effort when the backbone of such is the *family* on the home front which is attempted to be broken up by the prosecution here.

The Supreme Judicial Court holds that the volunteer activity of the child constituted "work" within the meaning of section 81 of the Act; and that it was "selling, exposing or offering for sale" prohibited by section 69. These constructions are distortions of the facts and the record. The society did not employ the child to work. Roger Flint the company servant did not importune the girl to labor. The appellant did not urge or ask the child to go with her. The child asked to go with her because the child was one of Jehovah's witnesses. She desired to serve Almighty God. She was serving Jehovah God and not her guardian, not any man, not the society or any earthly institution. The girl desired to pay her vows unto her God. Since she was thus serving Jehovah it cannot be said that she was working for any creature on earth. No man or government has authority to punish a child or another creature because the child is permitted to serve Jehovah God. There is not one iota of evidence that there was employment or

that the girl was an employee as that term is ordinarily understood. There is not the faintest suggestion that the child was exploited commercially. There is no evidence of any profit or income to any of the parties involved in the transaction.

It may be argued that the conclusion on the facts by the court below is binding upon this court. When a substantial federal question is involved as to whether a right secured by the federal constitution has been denied it is the duty of this court to inquire into the evidence, especially when there is a mixed question of law and fact. In *Sterling* v. *Constantin,* 287 U. S. 378, this court said: "Accordingly, it has been decided in a great variety of circumstances that when questions of law and fact are so intermingled as to make it necessary, in order to pass upon the federal question, the court may, and should analyze the facts. Even when the case comes to this court from the state court this duty must be performed as a necessary incident to a decision upon the claim of denial of federal right." See also *Fiske* v. *Kansas,* 274 U. S. 380, 385, 386. A distortion of the record in the case of *Murdock* v. *Commonwealth,* 319 U. S. 105, was held not conclusive upon the court. There it was said: "On this record it plainly cannot be said that petitioners were engaged in a commercial rather than a religious venture. It is a distortion of the facts of record to describe their activities as the occupation of selling books and pamphlets." In the *Murdock* case the record showed that in some transactions where contributions were made there was a differential but this record wholly fails to show any such. On the contrary it shows that the donations were turned over in their entirety to the society for more magazines. As in the *Murdock* case the record shows that many pieces of literature were donated without contribution.

Freedom of worship as secured in the Constitution is not confined to the conventional modes of worship of recognized sects at the time of the adoption of the Constitution. This liberty is not confined to the orthodox

practices of this age. The guarantee is necessarily general so as to include all kinds of worship. While the liberty is immovable its boundaries are not static or confined to the popular religions of the time. The guarantee was intended to endure for ages to come and to be adapted to the various crises of human affairs and vicissitudes of life of a mixed race of people of all kindreds, nations and tongues. The founding fathers knew that to confine the guarantee to such narrow limits would not be appropriate and conducive to the ends aimed for, namely, "blessings of liberty" for posterity. No democratic constitution can contain an accurate detail of all the beliefs and practices of the hundreds, if not thousands, of religious denominations permitted to flourish under its flag. To attempt such would require a very prolix document and be most unwise and pernicious, because it would be an attempt to provide an immutable rule for changes which, if foreseen at all, must as to the distant future be seen dimly and would deprive posterity of the capacity to avail itself of experience or to exercise its choice of change from religion to Christianity, etc.

For purposes of decision of this case it must be conceded that the Christian activity of Betty Simmons, while in the custody of appellant, was just as necessary and appropriate to her spiritual welfare as is the approved practice in the recognized faiths of taking a child to mass, to *Sunday School,* to hear a sermon or permitting a child to sing in a church choir or act as altar boy. The only distinction that can be drawn between the rights to engage in the various activities is the *forum.* The distinction as to the forum is a distinction without a difference and not material. For purposes of determining the constitutionality of the application of the statute there is no difference or distinction.

The judicial branch of the government rather than the legislative authority must decide when freedom of worship and freedom of maintaining a family must yield to the police power, and in performing this task this court must

make a deeper inquiry than when property rights are involved. "Mere legislative preferences for one rather than another means for combatting substantive evils, therefore, may well prove an inadequate foundation on which to rest regulations which are aimed at or in their operation diminish the effective exercise of rights so necessary to the maintenance of democratic institutions. It is imperative that, when the effective exercise of these rights is claimed to be abridged, the courts should 'weigh the circumstances' and 'appraise the substantiality of the reasons advanced' in support of the challenged regulations." Murphy, *J.*, *Thornhill* v. *Alabama,* 310 U. S. 88.

In *Schneider* v. *State,* 308 U. S. 147, it is said: "And so, as cases arise, the delicate and difficult task falls upon the courts to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the rights." The performance of this task cannot be presumed to have been undertaken by the legislature in the passage of the acts or laws which they pronounce. So long as legislators and those who apply and enforce the laws are perfect, are free from factional interests, are magnanimous and virtuous and without outside influence it may be presumed, that the circumstances warrant finding of constitutionality. But the plan of this government for an independent judiciary assumed that the legislators and enforcers of the law would not be so Utopian and contrary to uniform experience. Therefore the courts were created to weigh and decide conflicts between governor and governed on the theory that men and legislators and police will be as they are, imperfect, and not as they would be if they were perfect, free from vice and error.

If the application of the law here be sustained then it is readily apparent that the state could next step into the orthodox churches and make decrees by legislative fiat prohibiting boys and girls below a fixed age from singing in choirs, denying parents the privilege of their children acting as altar boys, and performing many other acts of

religious ceremonies. The right of the parents to direct their children in these and other activities are inherently protected by the Constitution against encroachment by child labor laws or delinquency laws.

The power of the State to require compulsory attendance at school and to direct the course of education of children in the public schools is not unlimited. This authority must yield to the prerogative of the parent to direct the education of the children in matters pertaining to the Bible and the faith or religion of such individuals. The right of the parent or guardian is held to be stronger and more vital in these sacred matters than the right of the state. [18]

The more vital state right to instill into the mind of the children patriotism has been held by this court to be subordinate to the conscientious objections of the child to participation in flag-salute ceremonies and giving the pledge of allegiance. This court declared invalid regulations providing for expulsion of children for refusal to participate in such ceremonies. [19]

If the educational policy of the State must yield to the consciences of the children and parents, then with equal force of reason it must be said that the police power of the state to enforce restrictive legislation designed to curb child labor cannot be applied, and when applied must yield to the right of the parent to direct the child to engage in practices, service and worship voluntarily rendered by the child and considered necessary in the discharge of its covenant obligations to Jehovah God. This conclusion is supported by the Supreme Court of New Hampshire in *State* v. *Richardson*, — N. H. — 27 A. 2d 94, involving the child labor statute of New Hampshire which is very similar

[18] *People* v. *Stanley*, 81 Colo. 276, 282, 265 P. 610; *State* v. *Weedman*, 55 S. Dak. 343, 226 N. W. 348; *Spiller* v. *Woburn*, 12 Allen (Mass.) 127; *State* v. *Schieve*, 91 N. W. 846; *Weiss* v. *School District*, 76 Wisc. 177; *People* v. *Board of Education*, 245 Ill. 334, 92 N. E. 251; *Herold* v. *Parish Board*, 136 La. 1034, 68 S. 16; *Hardwicke* v. *Board of School Trustees*, 54 Cal. A. 696, 205 P. 49.

[19] *West Virginia State Board of Education* v. *Barnette*, 319 U. S. —, 63 S. Ct. 1178.

to that of Massachusetts. That court held the statute to be inapplicable to the activity of the identical type under consideration in this case.

The holding of the court below is in conflict with *Pierce v. Society of Sisters*, 268 U. S. 510, which in principle sustains the contention of appellant here. In that case the Oregon compulsory education law making compulsory attendance of all children of a certain age at public schools was declared to be unconstitutional. In that case the court said: "The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." There are other opinions and statements by this court which lead to the conclusion above expressed.[20]

There are many cases which hold that the teaching of a child that the Bible forbids the salute to a flag which results in the child's expulsion from school does not warrant proceedings to have the child declared a dependent or delinquent child or justify prosecution of the parent for allegedly contributing to the dependency or delinquency of the child because of its being denied the right to attend school.[21]

By analogy the conclusion should be reached here that the appellant cannot be convicted under the statute because of her connection with the child's activity.

In the field of domestic relations where the courts are vested with broader discretion in respect to awarding

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[20] See *Meyer* v. *Nebraska*, 262 U. S. 390; *Berea College* v. *Kentucky*, 211 U. S. 45 at page 67; *Allgeyer* v. *Louisiana*, 165 U. S. 578 at page 589.

[21] *In re Lefebvre*, 91 N. H. 382, 20 A. 2d 185; *In re Latrecchia*, 128 N. J. L. 472, 26 A. 2d 881; *People* v. *Sandstrom*, 279 N. Y. 523. 18 N. E. 2d 840; *People* v. *Chiafreddo*, 381 Ill. 214, 44 N. E. 2d 888; *Commonwealth* v. *Johnson*, 308 Mass. 370; 35 N. E. 2d 801; *State* v. *Smith*, 155 Kans. 588, 127 P. 2d 518; *Bolling* v. *Superior Court for Clallam County, Wash.*, 133 P. 2d 803; *In re Jones*, 175 Misc. 451, 24 N. Y. S. 2d 10; *In re Reed*, 262 A. D. 814, 28 N. Y. S. 2d 92; *South Dakota* v. *Davis*, —S. D.—, 10 N. W. 2d 288, decided July 3, 1943; *Pendley* v. *State*, —Okla. Cr.—, 141 P. 2d 118, decided Sept. 1, 1943.

custody of children to either spouse it has been held to be an abuse of discretion to deny one of Jehovah's witnesses the custody of his child because the child has been taught to preach publicly and from house to house as one of Jehovah's witnesses. *Stone* v. *Stone*, — Wash. —, 133 P. 2d 526."[22]

The claimed and presumed injuries to the child from participation in the activity are too trivial and slight and do not justify the action taken by the state against the appellant under the police power expressed in the statute misapplied here. The benefits that flow from the exercise of the freedom to raise a family, direct the spiritual education of the children, freedom of worship by preaching in the manner the child did, outweigh the claimed interest of the state to such an extent as to exclude the encroachment by the state upon appellant's inherent right. Hence the conviction cannot be sustained.

There is no care so good and helpful as the care that devoted parents can give the child. The cold, disinterested arm of the State can never substitute for the warm embrace of a loving father, mother, aunt or guardian. Legislative fiats and regimented instruction of paid instructors at state schools for delinquents cannot substitute for the nurture and admonition of a Christian relative that build the child's security to begin a well-balanced, normal, adult life. This is true regardless of how misguided others may think that appellant is in the spiritual education of the child and the practice of preaching according to the dictates of her conscience.

The conclusion is compulsory that the construction and application given the statute by the courts below makes it unconstitutional because abridging the fundamental rights of appellant and the child to worship Almighty God. The

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[22] See also *Reynolds* v. *Rayborn*, 116 S. W. 2d 836, where it was held that teaching the child that God's law forbids the salute to any flag held to be no grounds for denying the custody of the child to its father, one of Jehovah's witnesses.

statute must be declared to be in fatal collision with the First and Fourteenth Amendments.

THREE

As construed and applied the statute is unconstitutional because it abridges and denies appellant's and the child's privileges, rights and immunities secured by the Constitution in violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution.

It is not contended that the statute is void on its face because of discrimination. Only insofar as the statute has been *construed and applied* to cover the worship and freedom of conscience secured by the Constitution *does the statute violate the equal protection clause.* The reason for this claim is that the courts below have arbitrarily discriminated against children under the age of eighteen years of age and parents having children under that age so as to prohibit such to enjoy their freedom of worship secured by the First Amendment. The statute, as construed, also discriminates against Jehovah's witnesses and their children and persons of various orthodox faiths in the matter of education of the children in the Bible and directing the religious practice of children. The classification is arbitrary and made without substantial basis in law. Thus it violates the Constitution.[23]

The classification here is not upon any ground of difference having a fair and substantial relation to the police powers of the commonwealth; therefore all persons in the same class cannot be treated alike.[24]

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[23] *Southern Ry. Co.* v. *Greene*, 216 U. S. 400, 417; *Ward* v. *Maryland*, 79 U. S. 418, 12 Wall. 418; *Yick Wo* v. *Hopkins*, 118 U. S. 358.

[24] See also *Power Mfg. Co.* v. *Saunders*, 274 U. S. 490; *Truax* v. *Corrigan*, 257 U. S. 312, 331-333, 337-339; *Quaker City Cab Co.* v. *Pennsylvania*, 277 U. S. 389; *Ex parte Ernest*, 138 Tex. Cr. R. 441, 136 S. W. 2d 595; *City of Rockland* v. *Hey*, 336 Ill. 526, 9 N. E. 2d 317; *Ward Baking Co.* v. *City of Fernandina*, 29 F. 2d 789. Cf. Freund, *The Police Power*, pp. 133, 497.

Appellant and the child have been denied their right of freedom of worship of Almighty God contrary to the *equal protection* clause of the Fourteenth Amendment because of the discrimination.

Conclusion

Notwithstanding the tendency on the part of the court below to minimize the issues presented in this case, the real issues to be reached and decided are of the greatest importance and far-reaching magnitude for every American. This is a contest precipitated by the Commonwealth directly challenging the sovereignty of the people. A factitious 'presumption of validity' has been thrown up by the Commonwealth to ward off the constitutional attack made by appellant, but it is here submitted that this defense cannot be used as a subterfuge for the sabotage of freedom, which is in truth and in fact its ultimate operation.

No freedom possessed and secured by the sovereign people is cherished like that of freedom to enjoy a family relationship and to worship God according to the dictates of conscience. The high regard for this freedom is born of bitter experiences endured by the ancestors of the present generation, at the hand of tyrants large and small in every corner of the globe. These tyrants, as the pages of history show, did not hesitate to dictate the most personal relationships of the family unit, and to jail those dissenting from their tyranny. In the absence of any positive showing that the actions of the appellant and her young charge constituted a threat to the public health or morals, the thing sought to be sustained here is not a whit better than the bloody tyranny of the dark ages.

Because the courts below erred in their judgment overruling appellant's motions and requests, all of which were based on the Constitution; because the judgment plainly and wrongfully infringes upon the most cherished right of the sovereign people of the United States; because the

judgment outrages the very thing the sovereign is now fighting to protect—the judgment ought to be reversed, and the appellant discharged, with costs.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1943

No. 98

SARAH PRINCE, *Appellant*

v.

COMMONWEALTH OF MASSACHUSETTS

APPEAL FROM THE SUPERIOR COURT OF MASSACHUSETTS
FOR THE COUNTY OF PLYMOUTH

APPELLANT'S REPLY BRIEF

HAYDEN C. COVINGTON
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MAY IT PLEASE THE COURT:

The shelter, appellee's brief, in which are entertained some astonishing and strange conclusions of law, has a superstructure of syllogistic subtleties held together by logistical legerdemain, all of which rest upon a foundation of false premises. This sort of structure can never withstand the storm of judicial scrutiny which brings with it the flood waters of justice and the fierce winds of common sense. With the collapse of that structure in the first gust of fundamentals and reason, those wishful conclusions blow away.

The foundation of that structure is: the trial court concluded that whether the appellant and the child were engaged in acts of preaching and worship of Jehovah God at the time and place in question was not material; and that the trial judge inferentially found that they were not thus engaged by his refusing appellant's request for ruling number four. (R. 9-10) This conclusion of the trial court is contrary to the undisputed evidence and is unsupported by any testimony. The contention by appellant and the girl that they were worshiping Almighty God is not disputed or denied by any witness. The trial court's finding distorts the record and substitutes a private opinion obtained from a source other than the record. The appellee's contention was anticipated and answered in appellant's main brief. (Br. p. 35) The conclusion or finding is not binding upon this Court and can be rejected for the reasons stated in the main brief. (Br. p. 35, and *passim*)

A large part of appellee's structure is that the doctrine of *parens patriae* is the supreme power within the Commonwealth, concerning the conduct of children brought within the pale of a statute having relation to a purpose which the state is entitled to protect. This contention of *supremacy* is maintained regardless of the facts to which the statute is applied. A large part of the superstructure is that the sacred right to instruct the child in the Bible and permit

it to discharge obligations suitable to its conscience by distribution of Bible literature is only a *natural right* which is not secured by the First Amendment. The Commonwealth has built this up to the point that the so-called *natural right* of the appellant to educate and rear the child, protected by the Fourteenth Amendment, is severed from the fundamental right of freedom of worship secured to her and the child under the First Amendment. This part of appellee's argument falls away when it appears that the rearing and education of Betty Simmons by appellant concerns her obligations to Almighty God, which homogeneous mixture makes it impossible to split the two rights in this case.

Massachusetts fails to tie together the parts of the argument by discharging the burden placed upon it to prove by satisfactory evidence an abuse of parental control, and a clear and present danger of substantial injury to the child from her conduct, as a condition precedent to sustaining the conviction and satisfying the demands of the First Amendment. The necessity to show abuse by the parent of the prerogative concerning the child before invoking *parens patriae* is entirely ignored by the Commonwealth as is the requirement to show that the particular facts of the case do not involve rights secured under the First and Fourteenth Amendments.

The opinions rendered in the cases cited by appellee and relied upon by it do not control here and do not support its invoking the doctrine of *parens patriae*. In those cases there was not involved an activity or the exercise of a right protected by the First Amendment; but the cases involved instances of commercial exploitation of children in gainful labor within the competency of the state to prohibit. The authority of the state to intervene through *parens patriae* and proceed against the parent or guardian is contingent upon a severance of the relationship of parent and child by an abuse and serious injury to the child when it is shown that the activity is protected by the Constitution. No such showing is made here.

The cases concerning failure to furnish medical attention to an ill child, employment of child in hazardous industries or in jobs that are clearly shown to be dangerous and imperil the life, limb and health of the child do not apply or control to a situation of the kind involved here. Those cases deal with the *abuse*, or plainly revealed a clear and present danger of some injury that can be prevented by the state. It is unnecessary to discuss the many cases of this kind relied upon by appellee. They are not in point.

The specious argument of the appellee advocating the adoption of Spartan totalitarian principles by the premature and unjustified exercise of *parens patriae* over the

child is rejected in *Meyer* v. *Nebraska*, 262 U. S. 390, at pages 401-402.

Again in *Pierce* v. *Society of Sisters*, 268 U. S. 510, at page 535, it was plainly stated that in the realm of religious training of children parents could not be penalized by statute, and the child was not a creature of the state.

In the field of *natural rights* of the parent where no activity secured by the First Amendment was involved the state has been denied the authority to intervene in the absence of abuse of the child by a parent. *Skinner* v. *Oklahoma*, infra; *Pierce* v. *Society of Sisters*, supra; *Meyer* v. *Nebraska*, supra. A scholarly discussion of the law and an exhaustive review of the decisions on this particular point were made by the Supreme Court of Washington in the case styled *In re Hudson*, 126 P. 2d 765, 777, 13 Wash. 2d 673, 685-707. It would be helpful to read that opinion.

Even if it is assumed *arguendo* that the doctrine of *parens patriae* overcomes the "natural right" of appellant to have custody and control of her minor charge, the doctrine encounters a much stronger and more serious obstacle. When this doctrine is misapplied to the facts and circumstances of this case, it comes into square collision with the express provisions of the First Amendment guaranteeing *freedom of worship*. This guarded constitutional right is much stronger and weightier than the right

of the state under the doctrine of *parens patriae*. The record shows that the activity is protected by the First Amendment. This cannot be gainsaid by an attempt to hide behind factitious conclusions of the trial court. (See appellant's main brief, page 35.)

By resort to the shield of the First Amendment, on which she has a firm and unshakable grasp, the appellant is protected by a presumption of unconstitutionality of the application of the statute which arises to throw back the criminal sanctions provisions of the statute imposed upon Sarah Prince. (See appellant's main brief, pages 22-23.)

Before appellee can apply the penalty of the statute to the appellant for her conduct it must first show to the satisfaction of this Court that it has discharged its burden by overcoming the presumption of unconstitutionality. The Commonwealth must establish from the particular facts of record an abuse of the prerogatives of the appellant by showing that some real, substantial and serious injury will be suffered by the child by permitting it to preach the gospel with appellant in the forum of the public streets. There is no claim of any such injury. No evidence was introduced by Massachusetts to show such peril to the child. The undisputed evidence fails to show any injury real or imaginary, present or future, that might come to the child. The child was in no greater peril than were the children on the

streets at the time who accompanied their parents shopping or to the theater, etc. Consider the remarks of Chief Justice Allen in *State* v. *Richardson*, — N. H. —, 27 A. 2d 94. It is now well established by this Court that the burden of proof is upon those who would restrict activity of the sort here involved to justify by evidence the infringement. Appellee having failed to offer any proof, the conviction must be reversed.

An extensive hypercritical argument is pursued by the Commonwealth, that the *natural rights* of the parents to raise children, direct their education and generally control the affairs of the minor are not connected with the freedom of worship. It needs no argument to establish that the activity of Jehovah's witnesses in preaching the gospel according to the dictates of their conscience is secured by the First and Fourteenth Amendments to the Constitution.

It is manifest, as heretofore stated, that the natural right is so entwined with the right of worship and the act of preaching that they cannot be segregated by any reasonable or lawful process. But even if it be found that only a *natural* right is involved, there is not a sufficient showing of a reasonable connection between the means employed and the ends aimed for in the facts shown in the record. Neither the right of free speech nor freedom of religion guaranteed by the First Amendment were involved, invoked or relied

upon in *Meyer* v. *Nebraska,* supra, *Pierce* v. *Society of Sisters,* supra, and *Skinner* v. *Oklahoma,* 316 U. S. 535; nevertheless the *due process* and *equal protection* clauses of the Fourteenth Amendment were strong enough to kick off the infringements in those cases. Such cases cannot be distinguished from the principle which appellant contends must be applied to the facts here. Even where the First Amendment cannot be invoked to raise a presumption of unconstitutionality or to throw back the presumption of validity of statutes, it is nevertheless the duty of the prosecution to establish in the evidence a clear and present danger of immediate injury. (See main brief, pages 24-26.) This the appellee has failed to do, and the record shows no clear and present danger of serious injury.

If this conviction is affirmed it means that upon the same record under the law of Massachusetts the custody of the child could be taken away from appellant and Betty Simmons be placed in a county training school. It is submitted that upon the record and law the judgments of the courts below should be reversed and the complaints ordered dismissed.

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In The Supreme Court of The United States

OCTOBER TERM, 1943

No. 98

SARAH PRINCE, *Appellant*

vs.

COMMONWEALTH OF MASSACHUSETTS, *Appellee*

BRIEF ON BEHALF OF THE APPELLEE THE COMMONWEALTH OF MASSACHUSETTS

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In The Supreme Court of The United States

OCTOBER TERM, 1943

No. 98

SARAH PRINCE, *Appellant*

vs.

COMMONWEALTH OF MASSACHUSETTS, *Appellee*

BRIEF ON BEHALF OF THE APPELLEE THE COMMONWEALTH OF MASSACHUSETTS

STATEMENT OF THE CASE

The appellant, Sarah Prince, was originally arraigned before the District Court of Brockton, Massachusetts, on January 5, 1942, charged, upon complaint duly made, with the violation of Massachusetts General Laws (Ter. Ed.) Chapter 149, sections 80 and 81 as amended by Statute 1939, Chapter 461, section 7. The appellant pleaded "not guilty" and, being put to trial on January 19, 1942, was found guilty by the said District Court and a fine of $10.00 imposed on each complaint. From this judgment the appellant appealed to the Superior Court for Plymouth County. The case came on to be heard in the said Superior Court on February 10, 1942. The appellant again pleaded "not guilty" to each complaint and waived her right to

trial by jury. On February 11, 1942, at the completion of the trial the appellant was found guilty on each complaint and a fine of $10.00 was imposed on each complaint.[1]

The appellant moved to dismiss and/or quash before trial, at the conclusion of the Commonwealth's case, and again at the close of all the evidence; said motions on each occasion being overruled and exceptions saved by the appellant. The appellant also made motions for a directed finding and for rulings which likewise were denied.[2] On February 17, 1943, the appellant's exceptions to the judgment and sentence were overruled and the statutes here in question were held to be constitutional by the Massachusetts Supreme Judicial Court in an opinion officially published: *Commonwealth* v. *Prince*, 1943 Mass. Adv. Sheets p. 233, 46 N. E. (2nd) 755, Record page 75 *et seq.*

STATEMENT OF FACTS

At the outset it appears to the appellee to be desirable to attempt to eliminate the confusion caused by various allegations of facts intermingled with conclusions of law, which have been made on behalf of the appellant with respect to the facts dealt with by the Massachusetts courts. The appellee, therefore, respectfully calls to the attention of this Court the following facts.

The appellant was complained of in the District Court of Brockton, Massachusetts, for a violation of Massachusetts General Laws (Ter. Ed.) Chapter 149, sections 80 and 81.

[1] Record p. 3. The appellant was also convicted in the lower courts on a complaint charging violation of section 79 (refusal to disclose identity of offending minor) of General Laws (Ter. Ed.) Chapter 149. Her exceptions to the conviction on this complaint were sustained by the Massachusetts Supreme Judicial Court. The conviction under section 79, therefore, is not here involved.

[2] Record pp. 3-10. All references to the Record are to the original.

as amended by Statute 1939, Chapter 461, section 7 (these sections of the statute are set forth at length *infra*, pages 5-6) in that on December 18, 1941, (1) she furnished one Betty M. Simmons, a minor girl of nine years of age, certain magazines, well knowing that the said Betty M. Simmons was to sell the said magazines unlawfully; and, (2) as the custodian of the said Betty M. Simmons, a minor as aforesaid, she permitted the said Betty M. Simmons to work contrary to law.[2] Both the appellant and Betty M. Simmons were members of the sect known as Jehovah's witnesses, and they both claimed to be, as they characterized it, "ordained ministers," and the appellant testified that this was her sole occupation.[4] Betty M. Simmons was a female minor of nine years of age and the appellant was her aunt and custodian.[5] The appellant testified that on December 18, 1941, she furnished to Betty M. Simmons a "magazine bag" with certain printed magazines known as "Watchtower" and "Consolation."[6] At 8:45 P.M. on said date the appellant was with the said Betty M. Simmons on a public street in the City of Brockton, Massachusetts. Suspended from the shoulder of the said Betty M. Simmons was a "magazine bag" on which was printed the following: "Watchtower explains the Theocratic Government, 5c a copy." Copies of the magazines "Watchtower" and "Consolation" were contained in the "magazine bag," and the minor, Betty M. Simmons, held up a copy of each magazine in her hands so that people passing by could see them. At the same time she was saying: "Remedy for World Distress. . . . Read the Watchtower."[7]

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[2] Record pp. 1-2.

[4] Record pp. 11, 13, 14 *passim*.

[5] Record p. 14.

[6] Record pp. 14, 22.

[7] Record p. 15.

While the appellant and Betty M. Simmons were so employed in exposing and offering magazines for sale on the public streets of Brockton, Massachusetts, they were encountered by George S. Perkins, a school attendance officer of the said city duly charged with the enforcement of the statutes here involved.[8] He testified that on a number of occasions prior to December 18, 1941, he had told the appellant that it was against the Massachusetts law to allow minor children on the streets selling magazines;[9] that on at least one previous occasion he had explained the law in detail to the appellant;[10] that prior to such date he had given the appellant written notice of the law in question;[11] and, that these notices had been given to the appellant as the result of her earlier violations of the statutes in question in allowing and encouraging other children to be on the public streets exposing and offering for sale magazines furnished to them by her for that purpose.[12] George S. Perkins testified further that the appellant openly refused to comply with this law.[13] As a result of the violation of December 18, 1941, he made the complaints upon which this case rests.[14]

The appellant contended in the trial court that Betty M. Simmons was neither selling, exposing, nor offering for sale magazines, that the said Betty M. Simmons was not engaged in work, that any money she received in return for the magazines was in the form of a "contribution," and that the act of the said Betty M. Simmons was her form of

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[8] Record pp. 15, 16.
[9] Record p. 18.
[10] Record p. 17.
[11] Record p. 18.
[12] Record pp. 16-17.
[13] Record p. 21.
[14] Record pp. 1-2, 18.

religious worship.[15] The trial court found that Betty M. Simmons was exposing, and offering magazines for sale in the public streets, and that these magazines had been furnished to her by the appellant for that purpose. The trial court also found that the appellant knew that Betty M. Simmons was a minor of the age of nine years. The court further found that the acts of the minor, Betty M. Simmons, in exposing and offering magazines for sale constituted work within the meaning of section 81 of Massachusetts General Laws (Ter. Ed.) Chapter 149. The court found further that the said Betty M. Simmons was not "accepting contributions," but instead was offering the magazines for sale. The court specifically found that the defendant and Betty M. Simmons were not engaged in their way of worship and that there was no question of practice of religion in issue.[16] These specific findings not only are amply warranted by the evidence, but are the only findings that could properly have been made. The trial court, therefore, could not do otherwise than find that the appellant had violated sections 80 and 81 of Massachusetts General Laws (Ter. Ed.) Chapter 149.

THE STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The appellant was prosecuted under Massachusetts General Laws (Ter. Ed.) Chapter 149, sections 80 and 81, as amended by Statute 1939, Chapter 461, section 7. These sections of Chapter 149, together with that part of section 69 to which they refer, provide:

"Section 69. *Street Trades for Children Regulated.*— No boy under twelve and no girl under eighteen shall sell, expose or offer for sale any newspapers, magazines, period-

[15-16] Record pp. 9-10.

icals or any other articles of merchandise of any description, or exercise the trade of bootblack or scavenger, or any other trade, in any street or public place."

"Section 80. *Penalty for Furnishing Articles to Be Illegally Sold by Minors Engaged in Street Trades, or Aiding in Violation of §§ 69-73.*—Whoever furnishes or sells to any minor any article of any description with the knowledge that the minor intends to sell such article in violation of any provision of sections sixty-nine to seventy-three, inclusive, or after having received written notice to this effect from any officer charged with the enforcement thereof, or knowingly procures or encourages any minor to violate any provisions of said sections, shall be punished by a fine of not less than ten nor more than two hundred dollars or by imprisonment for not more than two months, or both."

"Section 81. *Penalty on Parent or Guardian, etc.*—Any parent, guardian or custodian having a minor under his control who compels or permits such minor to work in violation of any provision of sections sixty to seventy-four, inclusive, or knowingly certifies to any materially false statement for the purpose of obtaining the illegal employment of such minor, shall for a first offence be punished by a fine of not less than two nor more than ten dollars or by imprisonment for not more than five days, or both; and for a subsequent offence by a fine of not less than five nor more than twenty-five dollars or by imprisonment for not more than ten days, or both."

The appellant contends that the Massachusetts statutes just quoted run *contra* to, and abridge the rights and liberties saved to her by the First and Fourteenth Amendments to the Constitution of the United States, where it is provided:

Art. I. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

Art. XIV. Sec. 1 . . . "No state shall make or enforce any law which shall abridge the privileges or immunities

of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

The appellee respectfully submits that the Massachusetts statutes set out above do not infringe upon or abridge any right or liberty made inviolable by these Amendments to the Constitution of the United States.

THE ISSUE

The issue sought to be presented by the appellant in this case is whether Massachusetts General Laws (Ter. Ed.) Chapter 149, sections 80 and 81, prohibiting, under penalty, the appellant from furnishing her minor ward, Betty M. Simmons, with magazines to be exposed or offered for sale by the said minor on the public streets of Massachusetts and prohibiting her from permitting her said minor ward so to expose and offer the same for sale on the said streets, are an unconstitutional abridgment of the liberties of freedom of speech, of the press, and of religion, protected by the First and Fourteenth Amendments to the Constitution of the United States.

SUMMARY OF ARGUMENT

I. The Massachusetts statutes in question do not fall within the prohibition of any rule heretofore laid down by this Court. The long line of decisions handed down by this Court involving members of the sect known as Jehovah's witnesses present no precedent for this case. The Massachusetts statutes, moreover, do not fall within the prohibition of any rule laid down by this Court in other decisions touching upon the liberties protected and made free of restraint by the First and Fourteenth Amendments to the Constitution of the United States.

II. The statutes in question are a valid state regulation for the preservation of public order, to promote and protect the health, safety, morals, and general welfare of the state's minor children, and their specific provisions do not offend against the constitutional guaranties of the First and Fourteenth Amendments to the Constitution of the United States. The state as *parens patriae* of its minor children is competent to lay down rules and regulations looking to the protection of the health, safety, morals and general welfare of such children. There is an inherent right of the government to restrain the freedom of the individual for the good of the social whole. In conformity with these general principles, social legislation of various types for the protection of children has been enacted in the several states. Even though such legislation may run *contra* to the parents' religious beliefs, it is not an unconstitutional interference with freedom of religion. The liberty of parents with respect to the religious belief of their children is a natural and not a civil liberty and it is only civil liberties that are protected by the Federal Constitution. The Massachusetts statutes here in question are in the nature of social legislation for the protection of minor children, and they rest upon the principle of the competency of the state as *parens patriae* to enact laws looking to the establishment of such protection. The appellant's contention that these statutes are discriminatory is without merit, since the state may direct its law against what it deems the evil as it actually exists without covering the whole field of possible abuses. It is no more than a far-fetched extravagance or a pretense to contend that statutes such as those here involved deny any care and concern of the parent for the child's education or well-being. Duty compels us to digress for the moment to point out that for the most part the appellant's statements addressed to this Court under the guise of constitutional argument are both

vague and unsound and rest largely upon hypothetical falsities.

III. The statutes here in question do not deal with or concern in any manner or degree whatsoever the constitutional guaranties of freedom of religion, freedom of speech, or freedom of press, either by their specific provisions or through their application as construed by the Massachusetts courts; the scope and application of the statutes being strictly and solely limited to the regulation of designated activity of minor children of a specified age. Freedom of religion, as often remarked by this Court, extends only to freedom of thought and belief, not to unlimited freedom of action. The statutes do not concern freedom of religion, they merely regulate the activity of minor children. The statutes have a reasonable relation to some purpose which is within the competency of the state to control and regulate. The statutes do not concern freedom of speech or of the press. They place neither a previous, nor an absolute, nor an unrestricted restraint upon mere distribution.

ARGUMENT

I. *The Massachusetts statutes in question do not fall within the prohibition of any rule heretofore laid down by this Court.*

Sections 80 and 81 of Massachusetts General Laws (Ter. Ed.) Chapter 149, do not fall within the prohibited rules laid down by this Court in the many decisions involving members of the sect to which the appellant belongs. In *Lovell* v. *City of Griffin*, 303 U. S. 444, the ordinance involved prohibited the distribution of literature of any kind at any time, at any place, and in any manner whatsoever without a permit from the City Manager, thus striking at the very

foundation of the freedom of the press by subjecting it to license and censorship. In *Schneider* v. *State*, 308 U. S. 147, the ordinance was directed at canvassing and banned unlicensed communication of any views, or the advocacy of any cause, from door to door, subject only to the power of a police officer to determine as a censor what literature might be distributed and who might distribute it. In *Cantwell* v. *Connecticut*, 310 U. S. 296, the statute dealt with the solicitation of funds for religious causes and authorized an official to determine whether or not the cause was a religious one, and to refuse a permit if he determined it was not, thus establishing a censorship of religion. In *Jamison* v. *Texas*, 318 U. S. —, 87 L. Ed. Adv. Sheets 629, the ordinance placed an absolute prohibition on the dissemination of ideas on the public streets through the medium of handbills, at all times, at all places, and under all circumstances. In *Largent* v. *Texas*, 318 U. S. —, 87 L. Ed. Adv. Sheets 627, the ordinance established an absolute censorship of religion and of the press by making it unlawful to canvass or solicit on the streets without a permit, and making the issuance of such a permit so to canvass or solicit a matter of unrestricted discretion on the part of the permit-issuing official. In *Jones* v. *City of Opelika*, 316 U. S. 584, reversed 318 U. S. —, 87 L. Ed. Adv. Sheets 854, the ordinance was directed at canvassing and made the holding of a license, revocable at any time in the unrestrained and unreviewable discretion of the licensing commission without cause and without notice or opportunity for a hearing, a requisite for the dissemination of all printed matter. In *Murdock* v. *City of Jeannette*, 318 U. S. —, 87 L. Ed. Adv. Sheets 827, the ordinance in question imposed a flat license tax as a condition precedent to the pursuit of activities whose enjoyment is guaranteed by the First Amendment, and so constituted a "previous restraint" on the constitutional liberties

of press and religion and inevitably tended to suppress their exercise. In *Martin* v. *City of Struthers*, 318 U. S. —, 87 L. Ed. Adv. Sheets 861, the ordinance made it unlawful for anyone distributing literature to ring a doorbell or otherwise summon the inhabitants of any residence to the door for the purpose of receiving such literature, even though such literature related to a religious cause. In *West Virginia State Board of Education* v. *Barnette*, 318 U. S. —, 87 L. Ed. Adv. Sheets 1171, the rule of the State Board of Education conditioned access to public education on making a prescribed sign and profession and at the same time coerced attendance by punishing both parent and child.

These cases go no further than to support the propositions that a state may not restrict freedom of religion, of the press, and of speech through the medium of taxation; that a state may not place an absolute restriction upon the dissemination of ideas through the medium of handbills on the public streets; that the right to exercise the constitutionally guaranteed freedoms may not be subjected to "previous restraint" through the medium of censorship by a permit-issuing official; and, that access to public education may not be conditioned on compliance with a compulsory act and profession of belief coupled with a penalty tending to enforce compliance. The Massachusetts statutes in question do not offend against any of these fundamental constitutional principles: they do not condition the right of appellant to act upon the payment of a tax; they do not place an absolute restriction on appellant's activities; they do not condition appellant's right to act upon her first having submitted to censorship of any official; and, they do not deal with access to public education. There is, however, still another and even more important distinction between the statutes here in question and those declared by this Court, in the cases discussed above, to be an un-

constitutional abridgment of the constitutionally protected civil liberties. Each of the statutes, and municipal ordinances, involved in the cases above, and struck down by this Court, was a regulatory measure: a statute or ordinance by means of which a state undertook to regulate overt activity on the part of the person proceeded against thereunder. The statutes here in question are not in any sense regulatory with respect to parents or custodians: as to parents or custodians these statutes are strictly and avowedly penal in nature.[1] To say, therefore, that the decisions in the cases mentioned above reflect upon the constitutionality of these Massachusetts statutes is to carry the extent and scope of those decisions beyond warranted limits.

Sections 80 and 81 of Massachusetts General Laws (Ter. Ed.) Chapter 149, do not fall within the prohibition of any rule laid down by this Court in other decisions cited by the appellant as touching upon the liberties protected and made free of restraint by the First and Fourteenth Amendments to the Federal Constitution. In *Meyer* v. *Nebraska*, 262 U. S. 390, the offending statute was an absolute prohibition upon the teaching of grade school children in any language other than the English language. The prohibition, therefore, was of an act which in and of itself was not shown to have any moral or physical harm upon such children. In *Pierce* v. *Society of Sisters*, 268 U. S. 510, the effect of the offending statute was such as to deprive citizens of vested property rights without compensation, and was an arbitrary legislative prohibition having no reasonable relation to some purpose within the competency of the state to control. In *Hague* v. *Committee for Industrial Organization*, 307 U. S. 496, the ordinance dealt with the exercise of the right of assembly for the purpose of communicating

[1] This matter will be discussed in some detail below.

views; it did not make comfort or convenience in the use of streets the standard of official action but enabled the local official absolutely to refuse a permit on his mere opinion that such refusal would prevent "riots, disturbances or disorderly assemblage." The ordinance thus created an instrument of arbitrary suppression of opinion on public questions. In *Herndon* v. *Lowry*, 301 U. S. 242, the assailed statute was directed at the curtailment of speech and assembly for the avowed purpose of preventing acts of sedition, criminal syndicalism, and other acts aimed at the overthrow of organized government, but "as construed and applied, . . . [amounted] . . . merely to a dragnet which may enmesh anyone who agitates for a change of government" (*ibid.* p. 263) without prescribing a reasonable ascertainable standard of guilt. The rule of "clear and present danger," as announced and applied by the Court in its many decisions construing the constitutionality of such statutes, is strictly limited to cases dealing with statutes and ordinances whose direct object is the curtailment of speech and assembly in the interest of the preservation of government. *Herndon* v. *Lowry*, *supra* p. 258. These decisions, therefore, are not here in point.[1]

The decisions cited by the appellant from various state courts in support of her argument respecting the construction of the Massachusetts statutes here involved are neither in point nor applicable. The decisions of the courts of one state respecting the construction of its statutes cannot be regarded as decisive of the true construction of the statutes of another state. *Commonwealth* v. *Prince*, 1943 Mass. Adv. Sheets 233, 237, 46 N.E. (2nd) 755, 758, Record page 80.

[1] The other decisions of this court cited and relied upon by appellant's counsel as bearing upon the unconstitutionality of the type of statutes here involved are not applicable and therefore are not here discussed.

II. *The statutes in question are valid state laws for the preservation of public order, to promote and protect the health, safety, morals and general welfare of the state's minor children, and their specific provisions do not offend against the constitutional guaranties of the First and Fourteenth Amendments to the Constitution of the United States.*

The State as *parens patriae* of its minor children is competent to lay down rules and regulations looking to the protection of the health, safety, morals and general welfare of such children. In *Chesapeake & Ohio Railway Company* v. *Stapleton*, 279 U. S. 587, this Court pointed out that the states have power to forbid the employment of minors and to punish the forbidden employment. The imposition of an absolute prohibition of the employment of minors in specified trades is a familiar exercise of the protective power of state government. *Sturges & Burn Manufacturing Company* v. *Beauchamp*, 231 U. S. 320. This Court has repeatedly stated that all questions relative to the care, control and custody of minor children belong exclusively to the State. *Hammer* v. *Dagenhart*, 247 U. S. 251; *Bailey* v. *Drexel Furniture Co.*, 259 U. S. 20; *Pierce* v. *Society of Sisters*, 268 U. S. 510, 527. In *Fontain* v. *Ravenel*, 17 How. (U. S.) 369, 393 it was pointed out that the prerogative powers which belonged to the sovereign as *parens patriae* remain with the States. Accord, *Hoyt* v. *Sprague*, 103 U. S. 613, 634. These powers being reserved to the individual States by the Tenth Amendment to the Federal Constitution cannot be encroached upon by the Federal government. *Hammer* v. *Dagenhart*, 247 U. S 251; *Bailey* v. *Drexel Furniture Co.*, 259 U. S. 20.

There is an inherent right of the government to restrain the freedom of the individual for the good of the social whole. Cf. *United States* v. *Macintosh*, 283 U. S. 605, 619. This proposition has been stated by this Court on numerous

occasions. In *Hamilton* v. *Regents of the University of California*, 293 U. S. 245, 268, Mr. Justice Cardozo pointed out that the right of private judgment has never yet been exalted above the powers and compulsion of the agencies of organized government. In *Crowley* v. *Christensen*, 137 U. S. 86, 89, Mr. Justice Field expressed the same thought when he wrote: "the possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order and morals of the community." (Quoted with approval in *Jacobson* v. *Massachusetts*, 197 U. S. 11, at 26-27.) Mr. Chief Justice Hughes, in expressing the opinion of this Court in the case of *Cox* v. *New Hampshire*, 312 U. S. 569, 574, remarked that: "Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses." Such forceful expositions of a general rule of government cannot be brushed aside lightly by an individual's assertion that some unrecognized claimed natural right has been abridged by the exigencies of organized government. The interest of the separate states in preserving to their individual citizens the civil liberties made free of restraint by our Federal Constitution is the interest of their very political and organized existence. Being thus, as it is, the collective interest of the total citizenry of a state it stands far above the single individual's separate interest.

It should first of all be pointed out, however, that the liberty of parents to bring up their children in the religious beliefs of the parents is a natural and personal liberty; not a civil liberty. It would be difficult to find a better discussion of the distinction between natural and civil liberty than that given by Blackstone in his Commentaries.

"The absolute rights of man, considered as a free agent, endowed with discernment to know good from evil, and with power of choosing those measures which appear to him to be most desirable, are usually summed up in one general appellation, and denominated the natural liberty of mankind. This natural liberty consists properly in a power of acting as one thinks fit, without any restraint or control, unless by the law of nature; being a right inherent in us by birth, and one of the gifts of God to man at his creation, when he endowed him with the faculty of free will. But every man, when he enters into society, gives up a part of his natural liberty, as the price of so valuable a purchase; and, in consideration of receiving the advantages of mutual commerce, obliges himself to conform to those laws, which the community has thought proper to establish. And this species of legal obedience and conformity is infinitely more desirable than that wild and savage liberty which is sacrificed to obtain it. For no man, that considers a moment, would wish to retain the absolute and uncontrolled power of doing whatever he pleases: the consequence of which is, that every other man would also have the same power; and then there would be no security to individuals in any of the enjoyments of life. Political, therefore, or civil liberty, which is that of a member of society, is no other than natural liberty so far restrained by human laws (and no farther) as is necessary and expedient for the general advantage of the public." *Blackstone's Commentaries*, i. 125 (see the learned and instructive note (5) appended to this passage in Cooley's second edition).

It is civil liberty that is protected by the Federal Constitution; not the natural liberties of man. This matter has been commented upon by numerous courts and text writers. *Cf.* Hughes, C.J., in *Cox* v. *New Hampshire*, 312 U. S. 569, 574 (set out above on page 15). The Illinois court in the case of *Ferrier's Petition*, 103 Ill. 367, aptly put the matter thus:

"There are restrictions imposed upon personal liberty which spring from the helpless or dependent condition of individuals in the various relations of life, among them being those of parent and child. . . . There are well recog-

nized powers of control in each of these relations over the actions of the child . . . which may be exercised. These are legal and just restraints upon personal liberty, which the welfare of society demands, and which, where there is no abuse, entirely consist with the constitutional guarantee of liberty." *Cf.* Cooley, *Constitutional Limitations*, 339, 342.

In conformity with these general and well established principles, legislation of one type or another has been enacted in all of the states of the United States establishing limits within which a parent must keep in the control and care of his minor children. The courts of the several states are unanimous in holding that state legislation for the protection of minor children, founded upon the principle of the position of the state as *parens patriae*, is not an unconstitutional interference with the parent's freedom of religion, even though such legislation runs *contra* to a particular parent's religious beliefs. The leading case dealing with the problems raised by a parent's religious belief which runs *contra* to social legislation enacted for the protection of minor children is that of *People* v. *Pierson*, 176 N. Y. 201. In this case the defendant was indicted under a New York statute for wilful failure to furnish medical attention to his minor daughter at a time when she was seriously sick. The facts showed that the defendant's infant daughter, aged sixteen and a half months, contracted whooping cough which later developed into pneumonia resulting in death. The defendant was aware of the dangerous condition of his child but he did not send for a physician to treat her for the reason that he was a believer in Divine healing. The defendant testified that as a member of the Christian Catholic Church of Chicago he did not believe in physicians and his religious faith led him to believe that the child would get well by prayer. The court charged the jury that the defendant's belief constituted no defense to the charge made and that "no man can be permitted to set up his religious belief as a

defense to the commission of an act which is in plain violation of the law of the state." In upholding the defendant's conviction the New York Court remarked:

"The peace and safety of the state involves the protection of the lives and health of its children as well as the obedience to its laws. Full and free enjoyment of religious profession and worship is guaranteed, but acts which are not worship are not. A person cannot, under the guise of religious belief, practice polygamy and still be protected from our statutes constituting the crime of bigamy. He cannot, under the belief or profession of belief that he should be relieved from the care of children, be excused from punishment for slaying those who have been born to him. Children when born into the world, are utterly helpless, having neither the power to care for, protect or maintain themselves. They are exposed to all the ills to which flesh is heir, and require careful nursing, and at times, when danger is present, the help of an experienced physician. But the law of nature, as well as the common law, devolves upon the parents the duty of caring for their young in sickness and in health, and of doing whatever may be necessary for their care, maintenance and preservation, including medical attendance if necessary, and an omission to do this is a public wrong which the state, under its police powers, may prevent. The legislature is the sovereign power of the state. It may enact laws for the maintenance of order by prescribing a punishment for those who transgress." Accord, *Rex* v. *Lewis*, 6 Ont. L. Rep. 132.

In the case of *Owens* v. *State*, 6 Okla. Crim. Rep. 110, the Oklahoma Court followed the *Pierson* case and held that religious belief on the part of a parent did not constitute a defense to a prosecution for breach of a statutory duty to furnish a child with medical attendance. Likewise, the defendant's ignorance of the exigencies of the situation is immaterial in a prosecution for wilful neglect of a child. *Rex* v. *Petch*, 25 Times L. R. 401.

In *Purinton* v. *Jamrock*, 195 Mass. 187, the Massachusetts Supreme Judicial Court in commenting upon a Massa-

chusetts statute (Statute 1905, Chapter 464, section 1) which provided that minor wards of the Commonwealth should not be denied the right to be brought up in the religious beliefs of their parents, pointed out that this statute protected the *right of the child*. "The first and paramount duty is to consult the welfare of the child . . . [if the] . . . wishes of the parent as to the religious education and surroundings of the child . . . cannot be carried into effect without sacrificing what the Court sees to be for the welfare of the child, they must so far be disregarded." (Pages 199-200). In *F.* v. *F.*, (1902) 1 Ch. 688, the English Court of Chancery, in discussing an infant's right to be brought up in the religion of its parents, remarked that the welfare of the infant must first of all be regarded, and its requirements must be treated as paramount.

The Massachusetts statutes here in question are in the nature of social legislation for the protection of minor children, and they rest upon the principle of the competency of the state as *parens patriae* to enact laws looking to the establishment of such protection. And, it seems to be well settled that such statutes must be presumed to be aimed at a particular evil where experience shows it to be most felt, and to be deemed by the legislature coextensive with the practical need. *Keokee Consolidated Coke Co.* v. *Taylor*, 234 U. S. 224, 227. The appellant's contention that these statutes are discriminatory in that they permit a parent of a child, of the prohibited age, "to allow the child to wander about aimlessly upon the streets with nothing to do without being subject to the terms of the ordinance [*sic*, statutes]" is both unsound and fanciful.[1] A state may properly direct its legislation against what it deems an ex-

[1] Our answer here is equally applicable to the *dicta* of the New Hampshire Supreme Court in the case of *Richardson* v. *State*, — N. H. —, 27 Atl. (2nd) 94, 97.

isting evil without covering the whole field of possible abuses. *Patsone* v. *Pennsylvania*, 232 U. S. 138, 144; *Farmers and Merchants Bank etc.* v. *Federal Reserve Bank etc.*, 262 U. S. 649, 661; *James-Dickinson Farm Mortgage Co.* v. *Harry*, 273 U. S. 119; *Whitney* v. *California*, 274 U. S. 357, 370. The appellant's contention thus in effect amounts to an objection that the Massachusetts statutes establish a classification of minor children. Statutes are not open to the objection of class discrimination unless the classification is so lacking in any adequate or reasonable basis as to preclude the assumption that it was made in the exercise of the legislative judgment and discretion. *Stebbins* v. *Riley*, 268 U. S. 137, 143; *Graves* v. *Minnesota*, 272 U. S. 425; *Swiss Oil Corporation* v. *Shanks*, 273 U. S. 407; *Whitney* v. *California*, *supra*. Moreover, such a contention as that advanced by the appellant is an unwarranted assumption that there does not exist other legislation to suppress the supposed evils not embraced within the terms of the statutes here assailed. Likewise, the appellant's assertion that the statutes here attacked could be applied as readily against the use of altar boys *in a Church* is a deliberate attempt at confusion. The Massachusetts statutes here in question are directed at the employment of minor children in street trades and prohibit parents from sponsoring and permitting their children to so engage in street trades as was the minor Betty M. Simmons in this case. These particular statutes do not prohibit the appellant from permitting and encouraging her minor children to engage in any activity she may feel to be of a religious character in any place other than on the public streets. If, as the appellant would inferentially have this Court believe, the use of minor children in church services in a house of worship is an existing evil then her appeal should be directed to the legislature. As we remarked above, the fact that all possible and sup-

posed abuses are not embraced within a single statute is no objection to the statute. *Patsone* v. *Pennsylvania*, 232 U. S. 138, 144, and cases there cited. In the *Patsone* case a Pennsylvania statute making it unlawful for an unnaturalized foreign born resident to own or be possessed of a shotgun or rifle was upheld by this Court. Mr. Justice Holmes writing for the Court said:

"The discrimination undoubtedly presents a more difficult question. But we start with the general consideration that a State may classify with reference to the evil to be prevented, and that if the class discriminated against is or reasonably might be considered to define those from whom the evil mainly is to be feared, it properly may be picked out. A lack of abstract symmetry does not matter. The question is a practical one dependent upon experience. The demand for symmetry ignores the specific difference that experience is supposed to have shown to mark the class. It is not enough to invalidate the law that others may do the same thing and go unpunished, if, as a matter of fact, it is found that the danger is characteristic of the class named. *Lindsley* v. *National Carbonic Gas Co.*, 220 U. S. 61, 80, 81. The State 'may direct its law against what it deems the evil as it actually exists without covering the whole field of possible abuses.' *Central Lumber Co.* v. *South Dakota*, 226 U. S. 157, 160. *Rosenthal* v. *New York*, 226 U. S. 260, 270. *L'Hote* v. *New Orleans*, 177 U. S. 587. See further *Louisville & Nashville R. R. Co.* v. *Melton*, 218 U. S. 36. The question therefore narrows itself to whether this court can say that the Legislature of Pennsylvania was not warranted in assuming as its premise for the law that resident unnaturalized aliens were the peculiar source of the evil that it desired to prevent. *Barrett* v. *Indiana*, 229 U. S. 26, 29."

It is no more than a far-fetched extravagance or pretense to contend that statutes such as these here involved deny any care and concern of the parent for the child's education or well being. The statutes do not either directly or indirectly diminish or infringe upon the parent's right and duty to direct his child's education and to see to his well-

being. These statutes provide measures seeking to place the common welfare of minor children on a plane higher than that which some individual parent might set. The moving consideration was that of the welfare of minor children; not what may or may not please an individual parent. A parent might feel that his child's education was neglected unless the child had learned to suffer pain through bodily mutilation, or physical abuse, and yet no one would deny to the state both the power and duty to suppress and penalize such "strange and generally unacceptable doctrines and tenets." Here it may be well for us to direct our attention for a moment to another feature of the appellant's argument.

We would be remiss in our duty if we failed to call this Court's attention to the many extravagant and pretentious statements made by appellant's counsel in appellant's "Statement as to Jurisdiction" (Typescript Record, p. 47 *et seq.*) under the guise of constitutional arguments. Statements such as these, to give only a few typical examples, illustrate the preposterous and almost unbelievable state of mind with which the simple question here presented is approached on behalf of the appellant:

"Marriage and childbearing is God's arrangement for all humankind that shall live on the earth. It is beyond the power of the state to interfere with or abridge the right of all persons within its boundary to procreate." (*ibid.*, p. 61)

"The state has no authority or power to tell a child at what age it can begin practicing the requirements of Almighty God taught it by the parent." (*ibid.*, p. 63)

"Here it cannot be denied that appellant was exercising a *federal* right secured impliedly by the United States Constitution, even as every federal employee exercises the right to perform assigned duty in public interest." (*ibid.*, p. 73)

"Since when has it become a crime in this 'Christian Nation' [*sic.*] for a little girl to say politely to her neigh-

bors, 'Remedy for world distress; read The Watchtower.'?' (*ibid.*, p. 73)

"The tendered message is irrefutably a public benefit, is of unparalleled importance in this hour of strain, rather than a public menace." (*ibid.*, p. 74)

It is almost unbelievable that statements such as these should be addressed to this Court as constitutional arguments! But, still more unbelievable is the appellant's attempt to advance as constitutional arguments their identity with the world struggle for the obliteration of despotism, and to portray their lot as that of martyrs and the position of the state as that of King Herod. The whole tenor of the appellant's argument alternates between these two contentions. But, thus it is that the song of St. Bernardette of Lourdes is one ever arising. Now as then the closing of a grotto to the adherents of a just cause is reflected in diversified groups pressing unmeritorious individual claims for recognition upon the foundation of a meritorious struggle. It is, in truth, an apish phenomenon of life, but, nevertheless, one which raises problems which must be solved. The solution to these diversified conflicts, allegedly joined by a single bond, depends not so much on one's philosophical outlook as on one's factual command. The answer certainly is not to be found in an abstract display of devotion. The whole tenor of appellant's argument is just that. It is, however, with hesitancy that we turn our attention to those portions of the appellant's argument in which they allege and assert Biblical authority in support of their contentions. Our hesitancy is born not out of a belief that the Bible supports their contention and denies our claim of the right of the state to govern individuals for the common good, but rather is it born out of our inherent conscienceness of the holiness of the teachings of that great Book and a reluctance to despoil those teachings by en-

deavoring to shield our case behind the cloak of religion. We openly assert that that is the position in which the appellant stands. Moreover, if we were to quote scriptural authority in support of our contention, we would be charged, as was the State of New Hampshire in the *Richardson* case, with: "Private misinterpretation of the scriptures." For the adherents of this sect, whose doctrines and alleged beliefs rest solely upon the "private interpretation" of one Pastor Russell and one Lawyer Rutherford, to make such a charge is an extravagant absurdity and discloses the entire foundation upon which their contentions are based: the will of organized society is a nullity if it conflicts with their own private interpretation of Biblical sources. The appellant's every effort is directed toward leaving the impression that she and members of her sect are peaceful, docile, and humble folk and that the law-enforcing agencies of the state have sought them out for assertive and aggressive attacks. No one who is familiar with the methods of Jehovah's witnesses—see the descriptive discussion by Mr. Justice Jackson in his separate opinion in *Douglas* v. *City of Jeannette*, 318 U. S. —, 87 L. Ed. Adv. Sheets 855—can fail to see the hypothetical falsities upon which the appellant's argument is based. The record in this case discloses beyond doubt the fact that the appellant's attitude was one of belligerent hostility and not that of a meek and humble martyr as she would have this Court believe. These are matters warranting open and frank discussion and we would have failed in our duty if we had not treated them here as such.

III. *The statutes here in question do not deal with or concern in any manner or degree whatsoever the constitutional guaranties of freedom of religion, freedom of speech, or freedom of press, either by their specific provisions or through their application as construed by the Massachusetts courts; the scope and application of the statutes being strictly and solely limited to the regulation of designated activity of minor children of a specified age.*

The appellant's contention that these statutes are an abridgment and denial of the constitutionally protected freedom of religion is entirely without merit. The freedom of religion protected by the Federal Constitution, as often pointed out by this Court, extends only to freedom of thought and belief, not to unlimited freedom of action. Mr. Chief Justice Waite, writing for this Court in the case of *Reynolds* v. *United States*, 98 U. S. 145, in a truly classical discussion of the question of freedom of religion under the law, remarked that "Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices." (*ibid.*, 166) In the case of *Davis* v. *Beason*, 133 U. S. 333, Mr. Justice Field reaffirmed this doctrine when he wrote: "However free the exercise of religion may be, it must be subordinate to the criminal laws of the country, passed with reference to actions regarded by general consent as properly the subjects of punitive legislation." (*ibid.*, 342-343) And, in the case of *The Late Corporation of the Church of Jesus Christ of Latter-Day Saints* v. *United States*, 136 U. S. 1, Mr. Justice Bradley writing for the Court put the matter in a realistic fashion when he said:

"One pretence for this obstinate course is, that their belief in the practice of polygamy, or in the right to indulge in it, is a religious belief, and, therefore, under the protection of the constitutional guaranty of religious freedom. This is altogether a sophistical plea. No doubt the Thugs

of India imagined that their belief in the right of assassination was a religious belief; but their thinking so did not make it so. The practice of suttee by the Hindu widows may have sprung from a supposed religious conviction. The offering of human sacrifices by our own ancestors in Britain was no doubt sanctioned by an equally conscientious impulse. But no one, on that account, would hesitate to brand these practices, now, as crimes against society, and obnoxious to condemnation and punishment by the civil authority.

"The State has a perfect right to prohibit polygamy, and all other open offences against the enlightened sentiment of mankind, notwithstanding the pretence of religious conviction by which they may be advocated and practised." (pp. 49-50).

In these cases this Court held that statutes prohibiting plural marriages were constitutional and that violation thereof could not be excused by reason of an asserted religious belief in plural marriages. This Court has never failed to recognize the fact that to allow absolute and unlimited individual freedom under the guise of freedom of religion would be to establish eventually an absolute freedom of individual action which would defeat the very freedoms sought to be made indestructible by our Constitution. Accordingly, religious objections to vaccination laws are not fatal to a statute calling for that kind of health protection. *Jacobson* v. *Massachusetts*, 197 U. S. 11. Conscientious scruples against bearing arms will not defeat a law imposing an oath to bear arms. *United States* v. *Macintosh*, 283 U. S. 605. Cf. *Hamilton* v. *Regents of the University of California*, 293, U. S. 245.[1] Public peace comes before uncontrolled and offensive expression of belief by a religious preacher. *Chaplinsky* v. *New Hampshire*, 317 U. S. —, 86 L. Ed. Adv. Sheets 671. Public

[1] It should be pointed out that the Federal Courts have thus far consistently refused to recognize the claim by Jehovah's witnesses that they are "ordained ministers" and as such exempt from either military duty or detention in conscientious objectors' camps.

order in the streets is superior to the absolute right of parading and preaching. *Cox* v. *New Hampshire*, 312 U. S. 569. Indeed, there can be no such thing as the absolute abstract individual freedom of man in an organized society of men. The freedom of the individual is the reflected freedom of the socially organized group. The framers of our Constitution sought to provide that no individual or group should be discriminatorily subjected to censorship or punishment merely because of his or their religious belief. They sought to do no more than that. "Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses." Mr. Chief Justice Hughes in *Cox* v. *New Hampshire*, 312 U. S. 569, 574.

The proposition that religious belief constitutes no defense for violation of a penal statute also has been announced repeatedly by numerous courts in construing various statutes, principally the violation of statutes dealing with Sabbath breaking.[1] In *Scales* v. *State*, 47 Ark. 476, a member of the religious sect known as the Seventh Day Baptists was convicted of violation of a statute prohibiting work on Sunday. The defendant argued that because he conscientiously believed that he was permitted by the law of God to labor on Sunday he might violate with impunity a statute declaring it illegal to so do. The Supreme Court of Arkansas, in upholding the conviction of the defendant, pointed out that "a man's religious belief cannot be accepted as a justification for his committing an overt act made criminal by the law of the land." (*ibid.*, 485) In *Knowles* v. *United States*, 170 Fed. 409, 411, this doctrine is clearly stated: "The constitutional guaranties of

[1] This Court has uniformly recognized that state Sunday laws are a legitimate exercise of state police power. *Hennington* v. *Georgia*, 163 U. S. 299; *Petit* v. *Minnesota*, 177 U. S. 164.

religious freedom and freedom of the press . . . cannot be made a shield for violation of criminal laws which are not designed to restrict religious worship or a free press." Accord, *Hiller* v. *State*, 124 Md. 385; *Silverberg Bros.* v. *Douglass*, 114 N. Y. S. 824; *State* v. *Barnes*, 22 N. D. 18; *State* v. *Hondros*, 100 S. C. 242; *Commonwealth* v. *Has*, 122 Mass. 40; *Commonwealth* v. *Anderson*, 272 Mass. 100.

In *Commonwealth* v. *Anderson*, *supra* at page 106, the Massachusetts Supreme Judicial Court pointed out:

"It is settled law that States within their constitutional right may regulate the sale, barter, or the offering for sale or barter, or the carrying for sale or barter, of goods, wares or merchandise, and impose penalties for the violation of such regulations. *Commonwealth* v. *Ober*, [12 Cush. 493]; *Emert* v. *Missouri*, [156 U. S. 296]. It is too clear for serious discussion or citation of authority that books and pamphlets, worldly or religious, are in their nature goods, wares or merchandise. Art. I of the Amendments to the Constitution of the United States and art. 11 of the Amendments to the Constitution of the Commonwealth of Massachusetts, which are relied on by the defendants, were not designed to prevent the adoption of reasonable rules and regulations concerning the sale of religious books and pamphlets, and no person, however earnest and sincere, can avail himself of those provisions as an authority to violate rules and regulations which govern the disposition by sale or otherwise of books however classified."

This Court on numerous occasions within the past few years has held that state regulations such as those here involved do not offend against the constitutional guaranties of the First and Fourteenth Amendments of the Federal Constitution. In *Cox* v. *New Hampshire*, 312 U. S. 569, this Court held that state laws providing for control of travel on the public streets in order to insure the safety and convenience of the traveling public are valid, even though they may conflict with an individual's asserted freedom of religion, of speech, and of the press. In *Chaplinsky* v. *New Hampshire*, 317 U. S. —, 86 L. Ed. Adv. Sheets 671, this

Court held that a state may punish conduct on streets which is in violation of a nondiscriminatory state law even though that conduct is alleged to be the exercise of religious freedom. This Court in *Jamison* v. *Texas*, 318 U. S. —, 87 L. Ed. Adv. Sheets 621, pointed out that "The right to distribute handbills concerning religious subjects on the streets may not be prohibited at all times, at all places, and under all circumstances," and thereby implied that a state may validly impose reasonable limitations upon the right so to distribute; that it is only the absolute prohibition of all persons, at all times, at all places, and under all circumstances which falls within the constitutional prohibition. In *Valentine* v. *Chrestensen*, 316 U. S. 52, this Court held that a state can prohibit the use of the streets for the distribution of purely commercial leaflets, even though such leaflets may have "a civil appeal, or a moral platitude" appended.

The statutes here in question have a reasonable relation to some purpose which it is within the competency of the state to control and regulate. Cf. *Meyer* v. *Nebraska*, 262 U. S. 390, 400; *Pierce* v. *Society of Sisters*, 268 U. S. 510, 535. Considering the ends sought to be achieved by these statutes none of the provisions thereof can be said to pass the "bounds of reason and assume the character of a merely arbitrary fiat." Mr. Justice Holmes, in dissent, in *Bartels* v. *Iowa*, 262 U.S. 404, 412. Legislation of the general and nondiscriminatory type here involved would seem to fall well within the rule laid down by this Court in the case of *Cantwell* v. *Connecticut*, 310 U. S. 296.

"The general regulation, in the public interest, of solicitation, which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to any constitutional objection, even though the collection be for a religious purpose. Such regulation would not constitute a prohibited previous restraint on the free

exercise of religion or interpose an inadmissible obstacle to its exercise." (page 305)

And, the remarks of Mr. Chief Justice Hughes in the case of *Cox* v. *New Hampshire*, 312 U. S. 569, 578, seem also equally applicable here:

"The argument as to freedom of worship is also beside the point. No interference with religious worship or the practice of religion in any proper sense is shown, but only the exercise of local control over the use of streets for parades and processions."

The provisions of Massachusetts General Laws (Ter. Ed.) Chapter 149, sections 80 and 81, as amended by Statute 1939, Chapter 461, section 7, are strictly limited, both by the specific terms thereof and by the construction placed thereupon by the Massachusetts courts, to minor children—specifically to boys under twelve and girls under eighteen. The single purpose of these statutes is to prohibit minor children of the specified ages from selling, exposing, or offering for sale newspapers, magazines, periodicals, or any other articles of merchandise of any description, or to engage in any street trade. These statutes are not directed, nor are they applied through the construction placed thereupon, toward the general prohibition of the distribution of literature or the dissemination of ideas on the public streets.

These statutes contain no trace of the objectionable "previous restraint" provisions of the many regulatory statutes of late struck down by this Court. The statutes here under attack do not contain provisions providing that minors may sell, expose or offer for sale magazines on the public streets after a public official has first passed upon the literature to be sold. These statutes could only fall within the prohibited rules heretofore laid down by this Court regarding "previous restraint" amounting to official censorship by

containing such provisions. The purpose of the statutes is not to provide for official determination of what literature may or may not be sold on the public streets but is solely directed toward conduct of minors of specified ages "regarded by general consent as properly the subjects of punitive legislation." *Davis* v. *Beason,* 133 U. S. 333, 343.

If state legislation of the type here attacked is to fall because a person professes a conscientious belief that such legislation is in conflict with the law of God, as he believes it to be, then not only will the welfare of organized society become subrogated to the will of the individual, and the state itself when so in conflict with religious dogma be reduced to impotency, but, indeed, as Mr. Chief Justice Waite remarked "every citizen under the guise of religious freedom becomes a law unto himself."

CONCLUSION

It is respectfully submitted that Massachusetts General Laws (Ter. Ed.) Chapter 149, sections 80 and 81, as amended by Statute 1939, Chapter 461, section 7, are valid state regulations passed under ample authority, and that they have a reasonable relation to some purpose which is within the competency of the state to control and regulate. Wherefore the appellee respectfully submits that the judgment of the Massachusetts courts be sustained.

Respectfully submitted,

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November, 1943.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1943

No. 98

SARAH PRINCE, *Appellant*

v.

COMMONWEALTH OF MASSACHUSETTS

APPEAL FROM THE SUPREME COURT OF MASSACHUSETTS
FOR THE COUNTY OF PLYMOUTH

Appellant's
PETITION FOR REHEARING

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1943

No. 98

SARAH PRINCE, *Appellant*

v.

COMMONWEALTH OF MASSACHUSETTS

APPEAL FROM THE SUPREME COURT OF MASSACHUSETTS
FOR THE COUNTY OF PLYMOUTH

Appellant's
PETITION FOR REHEARING

MAY IT PLEASE THE COURT:

Within the time fixed by the order extending time for filing a petition for rehearing, appellant now files and presents this petition. The Court is requested to grant the same, order a rehearing and direct a reargument of the cause for the r e a s o n that many important matters urged upon the Court have been overlooked in arriving at the decision. Grave error has been committed by this Court. Appellant urges this petition on the following

Grounds

ONE

This Court committed grave error in failing and refusing to hold that the statute is unconstitutional as construed and applied because it abridges and denies appellant's right to educate, teach and direct the spiritual welfare of the child, to maintain a family and to discharge her moral obligations as personal guardian of said child and the child is denied the right to the benefits of such relationship, contrary to the First and Fourteenth Amendments to the United States Constitution.

TWO

This Court committed grave error in failing and refusing to hold that the statute is unconstitutional as construed and applied because it abridges and denies appellant's and the child's freedom to worship Almighty God according to the commands of Jehovah and their freedom of conscience, contrary to the First and Fourteenth Amendments to the United States Constitution.

THREE

This Court committed grave error in failing and refusing to hold that the statute is unconstitutional as construed and applied because it abridges and denies appellant's and the child's privileges, rights and immunities secured by the Constitution, in violation of the *equal protection* clause of the Fourteenth Amendment to the United States Constitution.

Discussion and Reasons Supporting Petition

This motion is a further step in the judicial process of reviewing "another episode in the conflict between Jehovah's witnesses and state authority", and presents the issue: Whose law is supreme? That of Jehovah God or man? That of the people expressed in the Constitution or that of their agents expressed in statutes and misapplied by executive officers? Which must yield?

When the majority-opinion covering the controversy is pulled back and the light of reason and realism shines in upon the facts it becomes apparent that the conclusion reached in the opinion is the result of a synthetic process of reasoning foreign to judicial process and that the appellant and the child were engaged in acts of worship of Almighty God in a proper place, in such a manner as not to expose the child to any clear and present danger of injury to her body or mind, and which activity does not exceed the limit by any sort of abuse within the competency of the state to prohibit. The streets are the natural and proper place for the exercise of preaching activity by Jehovah's witnesses through dissemination of printed information and opinion, and this Court has many times so held. Use of the streets for this purpose is not impaired because they "have not become their religious property". While it has been contended that the streets may be used by Jehovah's witnesses, in common with others, to preach to the people in the same way as tent and temple are used, it never has been asserted that the right depended upon title thereto. Nor have Jehovah's witnesses before this Court claimed ownership of the streets or that they were their "religious property". It is also plain that the state or city does not own absolutely the streets and public highways so as to exclude Jehovah's witnesses therefrom. "Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating

thoughts between citizens and discussing public questions." *Hague* v. *C, I. O.*, 307 U. S. 496.

Government and state regulation as permitted to flow in the fields of economic welfare and commerce have been given a rather broad bed in which to flow to reach aims of the government permitted by the Constitution. The courts have been allowed by the Constitution to follow the direction of the legislature in many changes at various points along the stream of time and constitutional history in such fields. The Court has erroneously followed the legislature and the misguided executive agents of Massachusetts in this case. This action is not permitted by the Constitution, because the government has reached a different field of rights, that is to say, "civil rights."

In this enclosure of CIVIL RIGHTS and fundamental personal liberties secured by the express guarantees of the First Amendment, there is not established a broad channel in which the government and the courts may operate according to their discretion. The people, by these specific constitutional provisions, have definitely narrowed the channel of regulation and governmental activity and walled them in by high banks of rock on both sides of the governmental waters. This is to prevent a change of course of the stream and to keep the way straight and narrow. If the government gets out of its fixed course in these precious fields, there immediately arises a presumption of invalidity and unconstitutionality to throw back the stream of regulation into the fixed channel property made by the people through their Constitution. The statute in question and the opinion of this Court approving same are mere floodwaters which are out of the course established by the people. It is the purpose of this motion to show how they should be rightly returned to their proper place and recede from the field of fundamental personal liberties belonging to appellant.

"The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political contro-

versy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.

"In weighing arguments of the parties it is important to distinguish between the due process clause of the Fourteenth Amendment as an instrument for transmitting the principles of the First Amendment and those cases in which it is applied for its own sake. The test of legislation which collides with the Fourteenth Amendment because it also collides with the principles of the First, is much more definite than the test when only the Fourteenth is involved. Much of the vagueness of the due process clause disappears when the specific prohibitions of the First become its standard. The right of a state to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which a legislature may have a 'rational basis' for adopting. But freedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the state may lawfully protect. It is important to note that while it is the Fourteenth Amendment which bears directly upon the State it is the more specific limiting principles of the First Amendment that finally govern this case." (Mr. Justice Jackson in *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, 638-640. See, also, *United States* v. *Carolene Products Co.*, 304 U. S. 144, 152; *Busey* v. *District of Columbia*, 138 F. 2d 592.)

In this connection it is noticed that the Court entirely failed to consider and discuss the presumption of invalidity that throws back the statute misapplied by Massachusetts in this case. It should be observed that the Court failed to discuss whether or not there was evidence of clear and

present danger of substantial injury to the child from the activity in which she was engaged. In fact, there is no showing of clear and present danger in the record. Any substantial dangers and "the crippling effects" of child labor in the public streets are not shown to have a connection with the practice of worship by the child upon the street under direction of the parent. The dangers imputed are imaginary, chimerical and too remote to form a reasonable basis for the restriction. Moreover, "rational basis" has been held by the Court not to be adequate to support the prohibition of freedom of worship guaranteed by the First Amendment. *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, 638-640.

In criminal actions where constitutional presumption of innocence exists and in which it is shown that the restricted activity constituted an exercise of rights guaranteed by the Constitution in the First Amendment, there can be no substitution of presumed dangers, imagined dangers, possible perils, judicial notice of hazards in kindred fields and chimerical risks that are attendant in all phases of life, to justify an abridgment of the constitutional right for which protection is claimed. If the judicial process employed by the Court in creating a 'dangerous situation' in this case were employed in other situations of family life, the right to the custody of children could easily be denied parents on the theory that the home is a dangerous place and a situs of more deaths and injuries to children than are orphan asylums.

The burden is upon the Commonwealth of Massachusetts to prove affirmatively by evidence that the child was threatened by a clear, present and substantial injury arising from its participation in the protected activity. The principle was properly applied under direct mandate of this Court by the United States Court of Appeals in *Busey* v. *District of Columbia*, 138 F. 2d 592, where it is said:

"The record does not show what the expenses of licensing and regulation are. We must therefore determine who had the burden of proving them. . . .

"It does not necessarily follow that the present appellants have the burden of proving that the license fees which the District of Columbia imposes on their sales exceed the expenses of licensing and regulation. . . .

"We think we may now hold that when legislation appears on its face to affect the use of speech, press, or religion, and when its validity depends upon the existence of facts which are not proved, their existence should not be presumed; at least when their existence is hardly more probable than improbable, and particularly when proof concerning them is more readily available to the government than to the citizen. The burden of proof in such a case should be upon those who deny that these freedoms are invaded. . . . No presumption which lacks a probable basis in fact should be permitted to conceal an interference with essential freedoms."

The appellee wholly failed to discharge this burden and it is beyond the authority of this Court to FILL IN THE GAP in the proof by presumptions and judicial notice misapplied after the argument and submission of the case. A decision of such magnitude and involving such precious rights necessarily must be based on realities and not chimera. Fantasy cannot be substituted for fact. Nor can fiction take the place of proof.

It is wholly unreasonable to punish a parent for teaching and leading the child in acts of worship which do not impinge on the laws of morality and at the same time leave the way open for other parents to leave their children wandering about upon the streets, accompanying them shopping, going alone or with others to movies and engag-

ing in other acts far more injurious to the child than following its parent in acts of worship. The evils attendant to public worship by the child on the streets with its parent are not shown to carry with them any greater dangers than a parent's taking the child along the sidewalk with him for any of the thousands of other lawful purposes for which these public walks are used. It must be remembered that not only was the activity pursued by the appellant lawful, but also that it is guaranteed, according to this Court, against abridgment, by the Constitution.

If punishment of the parents is designed to prohibit or discourage them from taking their children with them in their Christian work so as to protect the interests of the child, such punishment is founded on a false premise. When a child is left at home alone there always lurk many dangers which are too numerous to mention and far greater than if the child is taken along with the parent. Who will deny that there will be less danger to the child when safely with its parent on the street than when put by itself in a movie or in an automobile while the parent pursues the lawful and benevolent activity of preaching the gospel?

It is noticed that the Court did not bring attendance of children at picture shows, where the child is subjected to views of murder, immorality, etc., and the performance of other activities, within the anathema of its child-welfare program expressed in the opinion. It is beyond the competency of the government, legislative, executive or judicial, to enter into the sacred fields of family relationship and dictate as to religious activity within the family unless it is shown to seriously and immediately affect the health, welfare or morals of the child or other persons. There is no proof or intimation of the existence of any such dangers in the activity of appellant.

It is to be observed that the judicial process employed in reaching the conclusions against appellant in this case would also bring within the anathema of child labor laws the activity in the public technical schools where labor and

manual training of various sorts are prescribed as a part of the course of study.[1]

The loose method of reasoning employed so as to raise certain hypothetical dangers to justify the prohibition of the exercise of the right to worship Almighty God is the erection of a dangerous precedent which can easily be extended to other situations entirely within the confines of the sanctity of the home and family and beyond reach of the state. The lack of proof of clear and present danger in this record cannot be frittered away on the assumption that the activity "may and at times does create situations difficult enough for adults to cope with and wholly inappropriate for children, especially of tender years, to face. Other harmful possibilities could be stated, of emotional excitement and psychological or physical injury".

The above-quoted part of the majority opinion is just another proof of the far-fetched reaching of the Court, *'straining-at-the-gnat-and-swallowing-the-camel'* process in manufacturing dangers that are not shown to exist or even suggested in the record as a basis of sustaining the conviction of appellant. It has heretofore been thought that in a criminal case the guilt of a person depended on his own conduct and not that of others.

If this fantastic theory be sustained, then there is no end to which the people can be swept from their liberties guaranteed by the Constitution. In effect it interns the law-abiding citizen and imprisons his children so as to deny their liberty in order to permit the law violator to have open streets up-

[1] General Eisenhower and the Secretary of the Treasury might also be subjected to prosecutions under state laws prohibiting child labor for encouraging children of school age to act as sales agents of war bonds in the war loan drives conducted by the Government. TELEGRAM by General Eisenhower to Clifford E. Paige, Chairman, U. S. Treasury War Finance Committee, Brooklyn, New York, received January 27, 1944, from London: "Will you please convey to the four hundred fifty thousand Brooklyn school children, who are acting as sales agents in the Fourth War Loan Drive, my commendations for their soldierly conduct? In volunteering for this work and in carrying on until their objective is achieved, they are exhibiting the fighting spirit that will bring victory to our cause."

on which to run loosely and not find within his sight a person lawfully using the streets. The Court has inferred that the city of Brockton is likely to be overcome by mobsters and mob violence to such an extent that the law-enforcing agencies cannot protect the innocent in the exercise of their constitutional rights; and that, therefore, Jehovah's witnesses should be enjoined from the leading of their children in public worship of Jehovah God. This danger had never been suggested by the appellee or injected into the proceedings in this case until the Court spoke.

The Court has overlooked the fact that the child in this case had reached a point of sufficient understanding that her conscience dictated to her that she must engage in preaching the gospel publicly by distributing literature. She believed that she must thus worship Jehovah God. The acts were the result of a conscience molded according to instruction given by Almighty God in His written Word. The child did not go because the mother asked her to go. Appellant did not force, persuade or coerce the child into publicly preaching. It was a voluntary act, entirely. The child in this respect was like the apostles, one of whom said: "For though I preach the gospel, I have nothing to glory of: for necessity is laid upon me; yea, woe is unto me, if I preach not the gospel!"—1 Corinthians 9:14, 16.

The prophet Ezekiel declared that should he fail to preach publicly the commandments of Almighty God the blood of the innocent would be upon his shoulders, which would result in his own everlasting destruction at the hand of Jehovah.—Ezekiel 33:6-16.

The youthful prophet Jeremiah was confronted with the threatening laws and decrees of unfaithful Jerusalem and the conflicting command of Almighty God. He said: "Ah, Lord GOD! behold, I cannot speak: for I am a child. But the LORD said unto me, Say not, I am a child: for thou shalt go to all that I shall send thee, and whatsoever I command thee thou shalt speak." (Jeremiah 1:6, 7) Later he recounted: "But his word was in mine heart as a burning fire shut up

in my bones, and I was weary with forbearing, and I could not stay." (Jeremiah 20:9) The voluntary position of Betty Simmons is analogous. (R. 14-20) It must be observed that youthful Jeremiah was arrested, prosecuted and imprisoned for his failure to comply with the decrees of the land, which was because of his faithfulness in executing commands of Jehovah God. In further proof of the voluntary action of the child it should be remembered that the child cried to go with Sarah Prince. (R. 14, 17, 18)

A distinction should be made between a child that is allowed to engage in street trades for the purpose of earning money and a child who accompanies its parent in public worship by preaching. Nor is the situation like that where the parent forces the child to engage in street trades to earn money to turn over to the parent. Such situations are not similar to that here.

The action of the child was the result of its individual and direct covenant obligation to Jehovah God. The individual duty of the child to Jehovah God does not depend on the act of the parent. These obligations have been fully discussed in the main brief (pages 27-33), and reference is made to them. If the child desires to worship Almighty God according to dictates of its conscience, the parent cannot interfere therewith or prevent it. The Supreme Command of Jehovah God to the parent is: "And, ye fathers, provoke not your children to wrath: but bring them up in the nurture and admonition of the Lord." (Ephesians 6:4) "But whoso shall offend one of these little ones which believe in me, it were better for him that a millstone were hanged about his neck, and that he were drowned in the depth of the sea." (Matthew 18:2-7) "Suffer little children to come unto me, and forbid them not: for of such is the kingdom of God."—Luke 18:16.

It is plain that the activity and worship here involved is the result of the working of the spirit and Word of Almighty God upon the child, and not coercion from the appellant. To punish appellant for the acts of the child is to

inflict pains and penalties upon her for the acts and conduct of another which she has no right to control according to her understanding of the law of Almighty God which she is bound to obey under penalty of everlasting death. This Court cannot protect or shield appellant against the punishment of Almighty God for violation of His laws, and it has no authority to issue an edict that warrants the state to compel her to do acts which will result in her everlasting destruction or punish her for failing to obey her Maker's Supreme Law. This proposition is older than this Court. It was well stated by Mr. Mason in Virginia in 1772 when he appeared as counsel for the Indians in *Robin* v. *Hardaway*, reported by Thomas Jefferson in 1 Jeff. (Va.) 109 at page 114. There he said: "The laws of nature are the laws of God; whose authority can be superseded by no power on earth. A legislature must not obstruct our obedience to him from whose punishments they cannot protect us. All human constitutions which contradict his laws, we are in conscience bound to disobey. Such have been the adjudications of our courts of justice."

So says Blackstone: "Man, considered as a creature, must necessarily be subject to the laws of his Creator, for he is entirely a dependent being. . . . This principle therefore has more or less extent and effect . . . as man depends absolutely upon his Maker for everything, it is necessary that he should in all points conform to his Maker's will. . . . This law of nature, being coeval with mankind, and dictated by God himself, is, of course, superior in obligation to any other. It is binding over all the globe, in all countries, at all times. *No human laws are of any validity if contrary to this;* and such of them as are valid derive all their force and all their authority, mediately or immediately, from the original. . . . *That is to say no human laws should be suffered to contradict these.*" [Italics added] *Commentaries* (Chase 3d ed.), pp. 5-7.

It cannot be overlooked that the Court is indirectly attempting to sanction the prohibition of the child's worship

of Almighty God. This raises an ominous threat against the very life of the child and throws her into the path of the machinery of the state devised for taking delinquent children away from their parents. The Court is urged to adopt the view analogous to that of Judge Lehman of the New York Court of Appeals, concurring in *People* v. *Sandstrom* (1939) 279 N. Y. 523, a case involving the analogous question of whether the parent could be prosecuted for teaching the child the Creator's commands written in the Bible that prohibit saluting a flag. In that case Judge Lehman said:

"She asks only that she be not compelled to incur the wrath of her God by disobedience to His commands. . . . The flag is dishonored by a salute by a child in reluctant and terrified obedience to a command of secular authority which clashes with the dictates of conscience. The flag 'cherished by all our hearts' should not be soiled by the tears of a little child. The Constitution does not permit, and the Legislature never intended, that the flag should be so soiled and dishonored."

Appellant suggests that the Court reconsider the dilemma in which it has placed her and her charge, wherein they are confronted with a predicament of conflicting punishments.

The course heretofore taken by appellant is dictated by the Lord Christ Jesus, who said: "Be not afraid of those who kill the body, but cannot destroy the [future] life; but rather fear him who can utterly destroy both life and body in Gehenna." (Matthew 10: 28, *Emphatic Diaglott*) It is because of this principle that the apostles, as faithful followers of Christ Jesus, when faced with the conflicting commands of Almighty God and "state authority", said: "We ought to obey God rather than men." (Acts 5: 29) "And daily in the temple, and in every house, they ceased not to teach and preach Jesus Christ." (Acts 5: 42) The decision of the national court to dismiss charges brought against the apostles at the time of their trial should be persuasive of a similarly realistic attitude to be taken on this parallel

occasion by this high court. Gamaliel said: "Refrain from these men, and let them alone: for if this counsel or this work be of men, it will come to nought: but if it be of God, ye cannot overthrow it; lest haply ye be found even to fight against God."—Acts 5:38, 39.

The basis for infringing upon the acts of a person dictated by conscience molded by Scriptural counsel and God's law, exists only when it is made apparent that the overt acts practiced break out against the peace, safety, health and morals of the community or threaten immediate danger of such dire consequences. If no such results are apparent, the consequent incompetency of the state to protect the person against punishment by Almighty God for disobedience to Him dictates that "state authority" cannot compel obedience to a law that works such a dilemma.

The Court has declared that young persons or children cannot become Jehovah's witnesses, but that only adult persons can reach such a status. "Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves." (RUTLEDGE, J., for the majority.) This statement overlooks entirely the fact that the action of the child was entirely voluntary. This Court's decision "martyrs"[2] the parent for the act of the child, which act of the child the parent cannot prohibit, prevent or stop without transgressing the law of Almighty God. Besides denoting 'one who voluntarily suffers death as the penalty of refusing to renounce his religion or a tenet, principle, or practice belonging to it', the word *martyr* (from the Greek) means simply "witness". "To be a martyr, signifies only to witness the truth of Christ."—*Webster's Revised Unabridged Dictionary.*

It is fundamental that a child's early years are the most

[2] 'Puts to death for adhering to some belief, faith, or profession, especially Christianity; makes a martyr of.'—*Webster's New International Dictionary* (1944).

critical of its lifetime, for during that period it must be taught the principles its parents expect shall guide it throughout life. It is axiomatic that a parent should teach a child the way it should go when it is young and that it will not thereafter depart from the way of righteousness. "Train up a child in the way he should go: and when he is old, he will not depart from it." (Proverbs 22:6) "Remember now thy Creator in the days of thy youth, while the evil days come not, nor the years draw nigh, when thou shalt say, I have no pleasure in them."—Ecclesiastes 12:1.

This teaching and authority of training up a child is not confined to mere indoctrination, but also extends to guiding the child in right conduct. If a parent must wait until the child is above the age of eighteen years to teach it the commandments of Almighty God and to direct it in the practices those commandments dictate, it may be too late to accomplish the purpose of such teaching. The principle announced by the Court is akin to theory and decree enforced under punishment in Soviet Russia where by law no child is permitted to practice any religious principle publicly or privately or to become a candidate for the priesthood in school or otherwise until 18 years of age.[3]

If in the field of secular education "state authority" is allowed to direct the activity and work of children in mechanics, manual training and other employments, then by force of the same reason the parent not only must be left free to teach principles but must also be allowed to direct and train the child in the spiritual field by assisting it to *practice* God-given precepts and Christian principles. The rule announced by this Court is such that it permits the proscribing of actions on the ground that they are improper acts of worship for the child. Such are radical principles of government that scarcely any religious body can accept.

"These and all others except the public proclaiming of

[3] See *Newsweek*, December 27, 1943, pp. 68-69; *Pathfinder*, September 25, 1943; *Newsweek*, February 1, 1943, "Religion"; Evans, *Religion in the U. S. S. R.*, Russia Today Society, London.

religion on the streets, if this may be taken as either training or indoctrination of the proclaimer, remain unaffected by the decision." The dangers of the majority opinion in direction of state regulation of the church are recognized by the Court when it enacted the above proviso at the end of its opinion. The handling of this delicate situation by tying on the 'saving clause' at the end to avoid misunderstanding of the Court's efforts is very similar to walking on eggs and at the same time trying not to break any. That feat cannot be done.

This straining effort of the Court to proscribe only activity similar to that carried on by Jehovah's witnesses may not protect the Court from the dangerous consequences of the logical extension of the principle announced when applied to other facts which will be reached by the force of the strange creature nurtured by the majority opinion in this case.

The principle thrown out by the Court upon the public waters is certain to wash back to the door of the Court in due time in a more difficult situation. This is necessarily the case when it is likely that other steps may be taken to deprive the parents of the custody of their children for permitting them to engage in acts of public worship as commanded by Almighty God and which the parent cannot prohibit under the pains of everlasting death at the hand of Almighty God pursuant to the execution of His perfect laws which require obedience at all costs. The law of Jehovah God does not change and needs no private interpretation. There is no opportunity for the creature to escape punishment by a change of view of some expounder of the law.

This presents a foreboding of national consequences very similar to that which flowed from the opinion of this Court in *Minersville School District* v. *Gobitis*, 310 U. S. 586. A brief summary of the effects of that decision is given in appellees' main brief in *West Virginia State Board of Education* v. *Barnette*, No. 591 October Term 1942, at pages 71-84. The Court can take judicial notice of the fact that

every state in the Union has child labor laws very similar to the Massachusetts statute here in question. Many cities have local ordinances containing similar provisions. (*McSparran* v. *Portland*, No. 597 October Term 1942, certiorari denied March 1, 1943, 318 U. S. 768; rehearing denied June 14, 1943, 319 U. S. 780.) On the authority of this Court's recent opinion the prosecutor for a midwestern city has placed on the calendar for trial certain proceedings pending in the Probate Court for the purpose of having several children of Jehovah's witnesses declared wards of the state under the delinquency laws for violation of a street-trades ordinance of that city based on public-street preaching by Jehovah's witnesses. Those otherwise perfectly demeanored children, who are attending school regularly, face the clear and present danger of being taken away from their parents, removed from public school and placed in a county training school and compelled to associate with delinquent children, criminals and others of base morals, because of their faithfulness to Almighty God by the performance of proper and harmless acts of proclaiming God's Word upon the public sidewalks.

These dire consequences that suddenly appear on the horizon give a reasonably clear picture of what is to follow from this decision, and should be persuasive to this Court to reconsider the doctrine announced in this case. The factitious and specious argument of the majority can hardly be said to justify the certain injury that is to follow this decision. Chief Justice Taney said that this Court's opinion "is always open to discussion when it is supposed to have been founded in error, and that its judicial authority should hereafter depend altogether on the force of the reasoning by which it is supported". (*The Passenger Cases*, 7 How. 283, 470) Justice Brandeis declared that the Court "bows to the lessons of experience and the force of better reasoning, recognizing that the process of trial and error, so fruitful in the physical sciences, is appropriate also in the judi-

cial function." *Burnet* v. *Coronado Oil & Gas Co.*, 285 U. S. 393, 406.

Justice Cardozo, while a judge of the New York Court of Appeals, wrote: "Not all the progeny of principles begotten of a judgment survive, however, to maturity. Those that cannot prove their worth and strength by the test of experience are sacrificed mercilessly and thrown into the void. . . . Every new case is an experiment; and if the accepted rule which seems applicable yields a result which is felt to be unjust, the rule is reconsidered. . . . The principles themselves are continually retested; for if the rules derived from a principle do not work well, the principle itself must ultimately be re-examined." *The Nature of the Judicial Process*, New Haven, 1921, pp. 22-23.[4]

When the injuries that might be suffered from an erroneous decision in a field of human relations and constitutional rights are so delicate and tender as these and which may prove to be wholly irreparable, it is not wise nor necessary to wait for the proof of the error of the principle by trial-and-error method. It did little good for the emperor at Rome to repent, change his mind and declare that he had entered an erroneous decree in respect to the Christians after they had been pitched to the lions and torn limb from limb.

It is the duty of counsel "who strive at your bar", who "venture to think ourselves also in some measure consecrated to the task of administering justice", to bring these matters to the Court's attention. "Recent opinions have reminded us that the initiative in reconsidering legal doctrine should come from an adequate challenge by counsel. Lawyers are close to the concrete consequences upon daily life of the pronouncements of this Court. It is for us to bring the cases and to present for your corrective action

[4] Justice Holmes, in *Abrams* v. *United States*, 250 U. S. 616, said: "With effervescing opinions, as with champagne, the quickest way to let them fall flat is to let them get exposed to the air."

any wrongs and injustices that result from operation of the law."[5] Were this Court left to its own devices for the engendering motion to set aside erroneous opinions the process may be unduly delayed and with very costly results to the people.[6]

The status of supremacy of this Court under the law in the discharge of its function is well stated by Charles Evans Hughes, thus: "We are under a Constitution, but the Constitution is what the judges say it is." *Addresses and Papers of Charles Evans Hughes* (Putnam, 1916), pp. 185-186.

"The Constitution nowhere provides that it shall be what the judges say it is. . . . What the Constitution does say is: 'The judicial Power shall extend to all cases . . . arising under this Constitution . . .' and that 'This Constitution, and the Laws of the United States which shall be made in pursuance thereof . . . shall be the supreme Law of the land.'" (*The Struggle for Judicial Supremacy*, Jackson, pp. 3-4) "Since Lord Chief Justice Coke bluntly told King James that while the King was under no man, he was under God and the law"[7] it must be assumed that "in cases involving the Federal Constitution, where correction through legislative action is practically impossible",[8] erroneous precepts of this Court should be openly challenged by counsel with the boldness of Lord Coke, in the public interest, so that the goal "equal justice under law" may be attained and maintained by this Court.

It is submitted that the decision of this Court is inconsistent with its holding in *West Virginia State Board of*

[5] Quoted from address of Robert H. Jackson, Attorney General of the United States, to the Chief Justice and Associate Justices at the ceremonies in commemoration of the 150th Anniversary of the Supreme Court, February 1, 1940.

[6] Compare *Erie Railroad Co.* v. *Tompkins*, 304 U. S. 64, overruling an erroneous and unjust rule of ninety-six years' practice started in *Swift* v *Tyson*, 16 Pet. 1, under which millions of dollars had been paid.

[7] Robert H. Jackson, Associate Justice of the Supreme Court of the United States, speaking before The Judicial Section of the New York State Bar Association at New York City, Saturday afternoon January 22, 1944.

[8] *Burnet* v. *Coronado Oil & Gas Co.*, 285 U. S. 393, 406.

Education v. *Barnette*, 319 U. S. 624, in several particulars. The presumption of invalidity of the law is not applied. The doctrine of clear and present danger of grave injury is ignored. The burden of proof of essential element cast upon the state to prove an abuse of the constitutional right is not considered. Presumption is here substituted for fact, contrary to the opinion in the *Barnette* case, in spite of the fact that the public interest of the state in the welfare of the child is the same. In both cases the activity and presence of the child were public and in a place where regulation is permitted and necessary in the interest of the state. The only differences in the facts which formed the controversy and issues are: In this case it is an overt act, admittedly not harmful in itself but declared so because of the nature of the forum; while in the *Barnette* case it was non-performance of an act. In both cases the action and failure to act are based on the same source of authority and result from a conscience dictated by Jehovah God. In each case the violation of the conscience is believed by the parties involved to bring the same result, that is to say, everlasting death at the hand of Jehovah God. The interests of the state in this case are not any greater than they were in the flag case. The dangers to the child for a violation of the law in this case are no greater than in the flag case. The acts involved in both brought punishment for the parents and the taking of the children away from the parent. For similar reasons the attempt on the part of the Court to distinguish the cases of *Pierce* v. *Society of Sisters*, 268 U. S. 510, and *Meyer* v. *Nebraska*, 262 U. S. 390, fails.

The decision in this case and the efforts to distinguish the above cases so as to reach the conclusion here and at the same time to leave them standing in effect erodes and wears those decisions down to the point that they only stand as shadows or vague outlines of what they originally meant. They stand out in the darkness as ghostly forms to confuse and mislead the bench and bar when confronted with the opinion of the Court in this case.

The dissenting opinion of Mr. Justice Jackson in this case, joined in by Justices Roberts and Frankfurter, points out that the line of distinction drawn by the Court, based on age, cuts across the true exercise of freedom of worship and is a wrong and dangerous principle for sustaining the judgment of the Court. It is submitted that the correct conclusion on the law involved in this case is reached by Mr. Justice Murphy in his opinion. The reasons stated and the arguments made by him in his dissent, all of which are incorporated herein by reference, should be adopted as the opinion of this Court.

The misapplication of the law, approved by this Court, to the true worship of the child and appellant is as obnoxious and as unconstitutional as if the Commonwealth of Massachusetts had passed a law declaring that all the first-born children of Jehovah's witnesses within the Commonwealth should be killed to stop the proclamation of Jehovah's kingdom. The law, as applied, is just as unreasonable as the supposed enactment just mentioned. The supposed measure would require argument equally as specious and factitious as those made in support of the misapplication of the child labor law in this case to justify its validity.

The misapplication of the law in this case reminds one of the words of Thomas Jefferson, on granting a pardon to those innocent persons prosecuted and convicted under the Alien and Sedition Laws. He said: "I consider that law to be a nullity, as absolute and as palpable as if Congress had ordered us to fall down and worship the golden image." *The Story of Cooperstown*, Birdsall, p. 86; *Works*, Jefferson.

The Commonwealth of Massachusetts and its agents whose mind is set upon frustrating and stopping the true and faithful worship of Almighty God Jehovah by little children and His witnesses should pause to consider the futility and vanity of its efforts. The misapplication of the law, and the approval thereof, is well likened to the passage and approval of a law which is enacted to prohibit

Jehovah God in heaven from receiving the worship of His faithful witnesses in the earth. The ridiculousness of such a law is described by David thus: "He that sitteth in the heavens shall laugh: the Lord shall have them in derision." (Psalm 2:4) The State cannot successfully fight against Almighty God. The wise man said: "Can one go upon hot coals, and his feet not be burned?" (Proverbs 6:28) To Saul, later Paul the apostle, the Lord Jesus Christ said: "It is hard for thee to kick against the pricks." (Acts 9:5) Paul confirmed the making of this statement to him by the Lord when defending himself before King Agrippa. (Acts 26:14) Common sense dictates to the soldier using a flame thrower not to discharge it against a heavy wind and be consumed by his own flames.

The wave of juvenile delinquency and flagrant violations of child labor laws that has swept the nation during the fever of total war is an alarming fact. J. Edgar Hoover, Director of the FBI, in a recent radio interview as reported in the *Congressional Record* for December 3, 1943 (p. A5642), states that it was a "grim reality" that in a government survey just completed "actual arrests in 18 leading cities, representing a population of 10,000,000", reflect a "42.7 percent increase in the arrests of boys under 18 years of age and a 43 percent increase in the arrests of girls under 18 years of age in the first 6 months of this year over a corresponding period in 1942. In the face of these facts, I have been amazed to note a tendency on the part of social theorizers and foggy-minded performers to say that juvenile delinquency figures are not as alarming as they sound. In fact, they seek to justify their ostrich-like attitude by saying that the rise in the arrests of youthful offenders is due to increased law enforcement, which is definitely not the case." Mr. Hoover does not lay the blame for this condition upon the war, but points out that the lack of "fundamentals" in the training of these youngsters is to blame. Quoting him further: "The present situation cannot be charged entirely to wartime laxity of morals and a last-fling

philosophy of life. That may be the case with the older violator, but when mere children turn to crime there is a more sinister reason. This condition did not come on us overnight. It is deep-rooted and does not forecast a very bright picture for the future. Something has happened to the moral stamina of America when the conventions and principles of honesty and common decency are regarded as 'old fogey' and 'antique'. There are certain fundamentals in life that are essential."

This Court should take judicial notice of the fact that the activity of the appellant and the child are no part of this rising tide of lawlessness. It is the height of irony to see a Christian mother punished for directing a child in worship when reckless and lawless gangs of teen-aged "zoot-suiters" and other delinquents loiter about the streets of many cities indulging in all manner of depravity and destructive conduct, although exempt from the reach of child labor laws. The activity of the child and appellant does not come from the employment shortage that has forced unscrupulous employers to resort to illegal exploitation of child labor, which has resulted in a multitude of social derangements.[9]

Every person possessed of his faculties of perception realizes that mere strict enforcement of laws against these practices as a remedy is as futile as seeking to prevent bodily ailments by punishing those who are taken ill. Now, in this time of world upheaval, the people, caught in a whirling maelstrom of violence pulling them to a vortex of social abnormalities, are in desperate need of the moral stabilization afforded by the comforting words of assurance from the Holy Bible. Since these activities "constitute not only the 'cheap defense of nations' but furnish a sure basis on which the fabric of civil society can rest, and without which

[9] The eminent Wisconsin jurist, Roland J. Steinle, recently delivered an enlightening and informative address on the cause of the distressing increase in juvenile delinquency and the present importance of the problem to the future of the nation. It was printed in the *Congressional Record* for February 17, 1944, at page A839.

it could not endure"[10]—thus bearing burdens that would otherwise fall upon the government and general public—it should be the policy of the judiciary as well as other governmental agencies to indulge every possible legal protection for the preaching activity, rather than throw obstacles in the path of such charitable and beneficent activity.

Viewing these alarming national conditions, should those who have the responsibility of applying and construing the laws under the Constitution devote their time and energies to justifying and legalizing the arrest and prosecution of the loving parents who have brought up their children to believe in and respect the law of Almighty God, which has a stronger, more beneficial effect and a more lasting contribution to child welfare and moral integrity of the child than the misapplication of child labor laws? By grotesque misapplication of such social laws the commonwealth has made it a crime for a clean-minded youngster to hand to another child or to an adult on the public street a publication announcing the establishment of Almighty God's blessed Kingdom of righteousness under Christ Jesus, that will forever lift mankind out of the filth and mire of social debasement in which millions of people of all nations wallow. Under the misapplied statute, so heinous is the offense of the little girl and her guardian in the activity of distributing Bible literature pointing young and old to the only way in which they can enjoy these promised blessings, that the guardian who permitted it is dragged to jail and threatened with the enforcement of the further sanctions of the statutes permitting officials to ravish the Christian home by rending asunder the parental relationship and placing the child in the custody of a county training school!

Were these harsh, discordant and unjust results envisioned and intended by the founding fathers, the authors of the Constitution and the people of the states who adopted it as the supreme law of the land?

[10] *Trustees of First M. E. Church South* v. *Atlanta*, 76 Ga. 181, 192.

Before taking the move which may bring this controversy to a close it would do the Court good to consider the remarks of Congressman Ed Gossett of Texas (*Congressional Record* for Feb. 15, 1944, Appendix, pp. A798-A799), who, speaking of these precise conditions, adopted as his text the scripture, "Righteousness exalteth a nation: but sin is a reproach to any people."—Proverbs 14:34.

Conclusion

Wherefore appellant prays that the order and judgment heretofore entered herein affirming the judgments of the courts below, be set aside and held for naught, and that on the briefs heretofore submitted, this petition for rehearing be granted and the Court render an order reversing the judgment of the courts below, or, in the alternative, order the cause to be reargued orally. Appellant prays for such other relief as she may show herself justly entitled to in the premises.

SARAH PRINCE, *Appellant*

By HAYDEN C. COVINGTON
ALFRED A. ALBERT
Counsel for Appellant

Certificate

The undersigned counsel for appellant hereby certifies that the foregoing petition for rehearing is prepared and filed in good faith so that justice may be done, and not for the purpose of delay.

HAYDEN C. COVINGTON
Counsel for Appellant

SUPREME COURT OF THE UNITED STATES.

No. 98.—October Term, 1943.

Sarah Prince, Appellant, vs. Commonwealth of Massachusetts.	Appeal from the Superior Court of Massachusetts, Plymouth County.

[January 31, 1944.]

Mr. Justice Rutledge delivered the opinion of the Court.

The case brings for review another episode in the conflict between Jehovah's Witnesses and state authority. This time Sarah Prince appeals from convictions for violating Massachusetts' child labor laws, by acts said to be a rightful exercise of her religious convictions.

When the offenses were committed she was the aunt and custodian of Betty M. Simmons, a girl nine years of age. Originally there were three separate complaints. They were, shortly, for (1) refusal to disclose Betty's identity and age to a public officer whose duty was to enforce the statutes; (2) furnishing her with magazines, knowing she was to sell them unlawfully, that is, on the street; and (3) as Betty's custodian, permitting her to work contrary to law. The complaints were made, respectively, pursuant to Sections 79, 80 and 81 of Chapter 149, Gen. Laws of Mass. (Ter. Ed.). The Supreme Judicial Court reversed the conviction under the first complaint on state grounds;[1] but sustained the judgments founded on the other two.[2] 313 Mass. 223. They present the only questions for our decision. These are whether Sections 80 and 81, as applied, contravene the Fourteenth

[1] The court found there was no evidence that appellant was asked Betty's age. It then held that conviction for refusal to disclose the child's name, based on the charge under Section 79, would violate Article 12 of the Declaration of Rights of the Commonwealth, which provides in part: "No subject shall be held to answer for any crimes or offence, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself."

[2] Appellant received moderate fines on each complaint, first in the District Court of Brockton, then on pleas of not guilty by trial *de novo* without a jury in the Superior Court for Plymouth County. Motions to dismiss and quash the complaints, for directed findings, and for rulings, were made seasonably and denied by the Superior Court.

Amendment by denying or abridging appellant's freedom of religion and by denying to her the equal protection of the laws.

Sections 80 and 81 form parts of Massachusetts' comprehensive child labor law.[3] They provide methods for enforcing the prohibitions of Section 69, which is as follows:

No boy under twelve and no girl under eighteen shall sell, expose or offer for sale any newspapers, magazines, periodicals or any other articles of merchandise of any description, or exercise the trade of bootblack or scavenger, or any other trade, in any street or public place.

Sections 80 and 81, so far as pertinent, read:

Whoever furnishes or sells to any minor any article of any description with the knowledge that the minor intends to sell such article in violation of any provision of sections sixty-nine to seventy-three, inclusive, or after having received written notice to this effect from any officer charged with the enforcement thereof, or knowingly procures or encourages any minor to violate any provisions of said sections, shall be punished by a fine of not less than ten nor more than two hundred dollars or by imprisonment for not more than two months or both. [Section 80]

Any parent, guardian or custodian having a minor under his control who compels or permits such minor to work in violation of any provision of sections sixty to seventy-four, inclusive . . . shall for a first offense be punished by a fine of not less than two nor more than ten dollars or by imprisonment for not more than five days, or both; . . . [Section 81].

The story told by the evidence has become familiar. It hardly needs repeating, except to give setting to the variations introduced through the part played by a child of tender years. Mrs. Prince, living in Brockton, is the mother of two young sons. She also has legal custody of Betty Simmons, who lives with them. The children too are Jehovah's Witnesses and both Mrs. Prince and Betty testified they were ordained ministers. The former was accustomed to go each week on the streets of Brockton to distribute "Watchtower" and "Consolation," according to the usual plan.[4] She had permitted the children to engage in this activity previously, and had been warned against doing so by the school

[3] Mass. Gen. Laws (Ter. Ed.) c. 149, as amended by Acts and Resolves of 1939, c. 461.

[4] Cf. the facts as set forth in Jamison v. Texas, 318 U. S. 413; Largent v. Texas, 318 U. S. 418; Murdock v. Pennsylvania, 319 U. S. 105; Busey v. District of Columbia, 129 F. 2d 24 (App. D. C.). A common feature is that specified small sums are generally asked and received but the publications may be had without the payment if so desired.

attendance officer, Mr. Perkins. But, until December 18, 1941, she generally did not take them with her at night.

That evening, as Mrs. Prince was preparing to leave her home, the children asked to go. She at first refused. Childlike, they resorted to tears and, motherlike, she yielded. Arriving downtown, Mrs. Prince permitted the children "to engage in the preaching work with her upon the sidewalks." That is, with specific reference to Betty, she and Mrs. Prince took positions about twenty feet apart near a street intersection. Betty held up in her hand, for passersby to see, copies of "Watch Tower" and "Consolation." From her shoulder hung the usual canvas magazine bag, on which was printed "Watchtower and Consolation 5¢ per copy." No one accepted a copy from Betty that evening and she received no money. Nor did her aunt. But on other occasions, Betty had received funds and given out copies.

Mrs. Prince and Betty remained until 8:45 p.m. A few minutes before this Mr. Perkins approached Mrs. Prince. A discussion ensued. He inquired and she refused to give Betty's name. However, she stated the child attended the Shaw School. Mr. Perkins referred to his previous warnings and said he would allow five minutes for them to get off the street. Mrs. Prince admitted she supplied Betty with the magazines and said, "[N]either you nor anybody else can stop me . . . . This child is exercising her God-given right and her constitutional right to preach the gospel, and no creature has a right to interfere with God's commands." However, Mrs. Prince and Betty departed. She remarked as she went, "I'm not going through this any more. We've been through it time and time again. I'm going home and put the little girl to bed." It may be added that testimony, by Betty, her aunt and others, was offered at the trials, and was excluded, to show that Betty believed it was her religious duty to perform this work and failure would bring condemnation "to everlasting destruction at Armageddon."

As the case reaches us, the questions are no longer open whether what the child did was a "sale" or an "offer to sell" within Section 69[5] or was "work" within Section 81. The state court's

[5] In this respect the Massachusetts decision is contrary to the trend in other states. Compare State *v.* Mead, 230 Iowa 1217; State *v.* Meredith, 197 S. C. 351; State *ex rel.* Semansky *v.* Stark, 196 La. 307; City of Shreveport *v.* Teague, 200 La. 679; People *v.* Barber, 289 N. Y. 378; Thomas *v.* City of Atlanta, 59 Ga. App. 520; City of Cincinnati *v.* Mosier, 61 Ohio App. 81. *Contra:* McSparran *v.* City of Portland (Circuit Court, Multnomah County, Oregon, June 8, 1942), cert. denied, 318 U. S. 768.

decision has foreclosed them adversely to appellant as a matter of state law.[6] The only question remaining therefore is whether, as construed and applied, the statute is valid. Upon this the court said: "We think that freedom of the press and of religion is subject to incidental regulation to the slight degree involved in the prohibition of the selling of religious literature in streets and public places by boys under twelve and girls under eighteen, and in the further statutory provisions herein considered, which have been adopted as a means of enforcing that prohibition." 313 Mass. 223, 229.

Appellant does not stand on freedom of the press. Regarding it as secular, she concedes it may be restricted as Massachusetts has done.[7] Hence, she rests squarely on freedom of religion under the First Amendment, applied by the Fourteenth to the states. She buttresses this foundation, however, with a claim of parental right as secured by the due process clause of the latter Amendment.[8] Cf. *Meyer* v. *Nebraska*, 262 U. S. 390. These guaranties, she thinks, guard alike herself and the child in what they have done. Thus, two claimed liberties are at stake. One is the parent's, to bring up the child in the way he should go, which for appellant means to teach him the tenets and the practices of their faith. The other freedom is the child's, to observe these; and among them is "to preach the gospel . . . by public distribution" of "Watchtower" and "Consolation," in conformity with the scripture: "A little child shall lead them."

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[6] The court's opinion said: "The judge could find that if a passerby should hand over five cents in accordance with the sign on the bag and should receive a magazine in return, a sale would be effected. The judge was not required to accept the defendant's characterization of that transaction as a 'contribution.' He could believe that selling the literature played a more prominent part in the enterprise than giving it way. He could find that the defendant furnished the magazines to Betty, knowing that the latter intended to sell them, if she could, in violation of § 69 . . . . The judge could find that the defendant permitted Betty to 'work' in violation of § 81 . . . . [W]e cannot say that the evils at which the statutes were directed attendant upon the selling by children of newspapers, magazines, periodicals, and other merchandise in streets and public places do not exist where the publications are of a religious nature." 313 Mass. 223, 227-228.

[7] Appellant's brief says: "The purpose of the legislation is to protect children from economic exploitation and keep them from the evils of such enterprises that contribute to the degradation of children." And at the argument counsel stated the prohibition would be valid as against a claim of freedom of the press as a nonreligious activity.

[8] The due process claim, as made and perhaps necessarily, extends no further than that to freedom of religion, since in the circumstances all that is comprehended in the former is included in the latter.

If by this position appellant seeks for freedom of conscience a broader protection than for freedom of the mind, it may be doubted that any of the great liberties insured by the First Article can be given higher place than the others. All have preferred position in our basic scheme. *Schneider* v. *State*, 308 U. S. 147; *Cantwell* v. *Connecticut*, 310 U. S. 296. All are interwoven there together. Differences there are, in them and in the modes appropriate for their exercise. But they have unity in the charter's prime place because they have unity in their human sources and functionings. Heart and mind are not identical. Intuitive faith and reasoned judgment are not the same. Spirit is not always thought. But in the everyday business of living, secular or otherwise, these variant aspects of personality find inseparable expression in a thousand ways. They cannot be altogether parted in law more than in life.

To make accommodation between these freedoms and an exercise of state authority always is delicate. It hardly could be more so than in such a clash as this case presents. On one side is the obviously earnest claim for freedom of conscience and religious practice. With it is allied the parent's claim to authority in her own household and in the rearing of her children. The parent's conflict with the state over control of the child and his training is serious enough when only secular matters are concerned. It becomes the more so when an element of religious conviction enters. Against these sacred private interests, basic in a democracy, stand the interests of society to protect the welfare of children, and the state's assertion of authority to that end, made here in a manner conceded valid if only secular things were involved. The last is no mere corporate concern of official authority. It is the interest of youth itself, and of the whole community, that children be both safeguarded from abuses and given opportunities for growth into free and independent well-developed men and citizens. Between contrary pulls of such weight, the safest and most objective recourse is to the lines already marked out, not precisely but for guides, in narrowing the no man's land where this battle has gone on.

The rights of children to exercise their religion, and of parents to give them religious training and to encourage them in the practice of religious belief, as against preponderant sentiment and assertion of state power voicing it, have had recognition here, most recently in *West Virginia State Board of Education* v. *Barnette*,

319 U. S. 624. Previously in *Pierce* v. *Society of Sisters*, 268 U. S. 510, this Court had sustained the parent's authority to provide religious with secular schooling, and the child's right to receive it, as against the state's requirement of attendance at public schools. And in *Meyer* v. *Nebraska*, 262 U. S. 390, children's rights to receive teaching in languages other than the nation's common tongue were guarded against the state's encroachment. It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder. *Pierce* v. *Society of Sisters, supra.* And it is in recognition of this that these decisions have respected the private realm of family life which the state cannot enter.

But the family itself is not beyond regulation in the public interest, as against a claim of religious liberty. *Reynolds* v. *United States*, 98 U. S. 145; *Davis* v. *Beason*, 133 U. S. 333. And neither rights of religion nor rights of parenthood are beyond limitation. Acting to guard the general interest in youth's well being, the state as *parens patriae* may restrict the parent's control by requiring school attendance,[9] regulating or prohibiting the child's labor,[10] and in many other ways.[11] Its authority is not nullified merely because the parent grounds his claim to control the child's course of conduct on religion or conscience. Thus, he cannot claim freedom from compulsory vaccination for the child more than for himself on religious grounds.[12] The right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death. *People* v. *Pierson*, 176 N. Y. 201.[13] The catalogue need not be lengthened. It is sufficient to show what indeed appellant hardly disputes, that the state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare; and that this includes, to some extent, matters of conscience and religious conviction.

[9] State v. Bailey, 157 Ind. 324; compare Meyer v. Nebraska, 262 U. S. 390; Pierce v. Society of Sisters, 268 U. S. 510; West Virginia State Board of Education v. Barnette, 319 U. S. 624.

[10] Sturges & Burn Mfg. Co. v. Beauchamp, 231 U. S. 320; compare Muller v. Oregon, 208 U. S. 412.

[11] Cf. People v. Ewer, 141 N. Y. 129.

[12] Jacobson v. Massachusetts, 197 U. S. 11.

[13] See also State v. Chenoweth, 163 Ind. 94; Owens v. State, 6 Okla. Cr. 110.

But it is said the state cannot do so here. This, first, because when state action impinges upon a claimed religious freedom, it must fall unless shown to be necessary for or conducive to the child's protection against some clear and present danger, cf. *Schenck* v. *United States*, 249 U. S. 47; and, it is added, there was no such showing here. The child's presence on the street, with her guardian, distributing or offering to distribute the magazines, it is urged, was in no way harmful to her, nor in any event more so than the presence of many other children at the same time and place, engaged in shopping and other activities not prohibited. Accordingly, in view of the preferred position the freedoms of the First Article occupy, the statute in its present application must fall. It cannot be sustained by any presumption of validity. Cf. *Schneider* v. *State*, 308 U. S. 147. And, finally, it is said, the statute is, as to children, an absolute prohibition, not merely a reasonable regulation, of the denounced activity.

Concededly a statute or ordinance identical in terms with Section 69, except that it is applicable to adults or all persons generally, would be invalid. *Young* v. *California*, 308 U. S. 147; *Nichols* v. *Massachusetts*, 308 U. S. 147; *Jamison* v. *Texas*, 318 U. S. 413; *Murdock* v. *Pennsylvania*, 319 U. S. 105; *Martin* v. *City of Struthers*, 319 U. S. 141.[14] But the mere fact a state could not wholly prohibit this form of adult activity, whether characterized locally as a "sale" or otherwise, does not mean it cannot do so for children. Such a conclusion granted would mean that a state could impose no greater limitation upon child labor than upon adult labor. Or, if an adult were free to enter dance halls, saloons, and disreputable places generally, in order to discharge his conceived religious duty to admonish or dissuade persons from frequenting such places, so would be a child with similar convictions and objectives, if not alone then in the parent's company, against the state's command.

The state's authority over children's activities is broader than over like actions of adults. This is peculiarly true of public activities and in matters of employment. A democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens, with all that implies. It may secure this against impeding restraints and dangers within

[14] Pertinent also are the decisions involving license features: Lovell v. City of Griffin, 303 U. S. 444; Schneider v. State, 308 U. S. 147; Hague v. Congress of Industrial Organizations, 307 U. S. 496.

a broad range of selection. Among evils most appropriate for such action are the crippling effects of child employment,[15] more especially in public places, and the possible harms arising from other activities subject to all the diverse influences of the street.[16] It is too late now to doubt that legislation appropriately designed to reach such evils is within the state's police power, whether against the parent's claim to control of the child or one that religious scruples dictate contrary action.

It is true children have rights, in common with older people, in the primary use of highways. But even in such use streets afford dangers for them not affecting adults. And in other uses, whether in work or in other things, this difference may be magnified. This is so not only when children are unaccompanied but certainly to some extent when they are with their parents. What may be wholly permissible for adults therefore may not be so for children, either with or without their parents' presence.

Street preaching, whether oral or by handing out literature, is not the primary use of the highway, even for adults. While for them it cannot be wholly prohibited, it can be regulated within reasonable limits in accommodation to the primary and other incidental uses.[17] But, for obvious reasons, notwithstanding appellant's contrary view,[18] the validity of such a prohibition applied to children not accompanied by an older person hardly would seem open to question. The case reduces itself therefore to the question whether the presence of the child's guardian puts a limit to the state's power. That fact may lessen the likelihood that some evils the legislation seeks to avert will occur. But it cannot forestall all of them. The zealous though lawful exercise of the right to engage in propagandizing the community, whether in religious,

[15] See, e. g., Volumes 1-4, 6-8, 14, 18, Report on Condition of Women and Child Wage Earners in the United States, Sen. Doc. No. 645, 61st Cong., 2d Sess.; The Working Children of Boston, U. S. Dept. of Labor, Children's Bureau Publication No. 89 (1922); Fuller, The Meaning of Child Labor (1922); Fuller and Strong, Child Labor in Massachusetts (1926).

[16] See e. g. Clopper, Child Labor in City Streets (1912); Children in Street Work, U. S. Dept. of Labor, Children's Bureau Publication No. 183 (1928); Children Engaged in Newspaper and Magazine Selling and Delivering, U. S. Dept. of Labor, Children's Bureau Publication No. 227 (1935).

[17] **Cox v. New Hampshire**, 312 U. S. 569; Chaplinsky v. New Hampshire, 315 U. S. 568.

[18] Although the argument points to the guardian's presence as showing the child's activities here were not harmful, it is nowhere conceded in the briefs that the statute could be applied, consistently with the guaranty of religious freedom, if the facts had been altered only by the guardian's absence.

political or other matters, may and at times does create situations difficult enough for adults to cope with and wholly inappropriate for children, especially of tender years, to face. Other harmful possibilities could be stated, of emotional excitement and psychological or physical injury. Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves. Massachusetts has determined that an absolute prohibition, though one limited to streets and public places and to the incidental uses proscribed, is necessary to accomplish its legitimate objectives. Its power to attain them is broad enough to reach these peripheral instances in which the parent's supervision may reduce but cannot eliminate entirely the ill effects of the prohibited conduct. We think that with reference to the public proclaiming of religion, upon the streets and in other similar public places, the power of the state to control the conduct of children reaches beyond the scope of its authority over adults, as is true in the case of other freedoms, and the rightful boundary of its power has not been crossed in this case.

In so ruling we dispose also of appellant's argument founded upon denial of equal protection. It falls with that based on denial of religious freedom, since in this instance the one is but another phrasing of the other. Shortly, the contention is that the street, for Jehovah's Witnesses and their children, is their church, since their conviction makes it so; and to deny them access to it for religious purposes as was done here has the same effect as excluding altar boys, youthful choristers, and other children from the edifices in which they practice their religious beliefs and worship. The argument hardly needs more than statement, after what has been said, to refute it. However Jehovah's Witnesses may conceive them, the public highways have not become their religious property merely by their assertion. And there is no denial of equal protection in excluding their children from doing there what no other children may do.

Our ruling does not extend beyond the facts the case presents. We neither lay the foundation "for any [that is, every] state intervention in the indoctrination and participation of children in religion" which may be done "in the name of their health and welfare" nor give warrant for "every limitation on their religious

training and activities." The religious training and indoctrination of children may be accomplished in many ways, some of which, as we have noted, have received constitutional protection through decisions of this Court. These and all others except the public proclaiming of religion on the streets, if this may be taken as either training or indoctrination of the proclaimer, remain unaffected by the decision.

The judgment is

Affirmed.

Mr. Justice MURPHY, dissenting.

This attempt by the state of Massachusetts to prohibit a child from exercising her constitutional right to practice her religion on the public streets cannot, in my opinion, be sustained.

The record makes clear the basic fact that Betty Simmons, the nine-year old child in question, was engaged in a genuine religious, rather than commercial, activity. She was a member of Jehovah's Witnesses and had been taught the tenets of that sect by her guardian, the appellant. Such tenets included the duty of publicly distributing religious tracts on the street and from door to door. Pursuant to this religious duty and in the company of the appellant, Betty Simmons on the night of December 18, 1941, was standing on a public street corner and offering to distribute Jehovah's Witness literature to passersby. There was no expectation of pecuniary profit to herself or to appellant. It is undisputed, furthermore, that she did this of her own desire and with appellant's consent. She testified that she was motivated by her love of the Lord and that He commanded her to distribute this literature; this was, she declared, her way of worshipping God. She was occupied, in other words, in "an age-old form of missionary evangelism" with a purpose "as evangelical as the revival meeting." *Murdock* v. *Pennsylvania*, 319 U. S. 105, 108, 109.

Religious training and activity, whether performed by adult or child, are protected by the Fourteenth Amendment against interference by state action, except insofar as they violate reasonable regulations adopted for the protection of the public health, morals and welfare. Our problem here is whether a state, under

Dissenting opinion of Mr Justice Murphy should follow concurring opinion of Mr Justice Jackson appearing on page 14.

the guise of enforcing its child labor laws, can lawfully prohibit girls under the age of eighteen and boys under the age of twelve from practicing their religious faith insofar as it involves the distribution or sale of religious tracts on the public streets. No question of freedom of speech or freedom of press is present and we are not called upon to dete mine the permissible restraints on those rights. Nor are any truancy or curfew restrictions in issue. The statutes in question prohibit all children within the specified age limits from selling or offering to sell "any newspapers, magazines, periodicals or any other articles of merchandise of any description . . . in any street or public place." Criminal sanctions are imposed on the parents and guardians who compel or permit minors in their control to engage in the prohibited transactions. The state court has construed these statutes to cover the activities here involved, cf. *State* v. *Richardson*, 27 A. 2d 94, thereby imposing an indirect restraint through the parents and guardians on the free exercise by minors of their religious beliefs. This indirect restraint is no less effective than a direct one. A square conflict between the constitutional guarantee of religious freedom and the state's legitimate interest in protecting the welfare of its children is thus presented.

As the opinion of the Court demonstrates, the power of the state lawfully to control the religious and other activities of children is greater than its power over similar activities of adults. But that fact is no more decisive of the issue posed by this case than is the obvious fact that the family itself is subject to reasonable regulation in the public interest. We are concerned solely with the reasonableness of this particular prohibition of religious activity by children.

In dealing with the validity of statutes which directly or indirectly infringe religious freedom and the right of parents to encourage their children in the practice of a religious belief, we are not aided by any strong presumption of the constitutionality of such legislation. *United States* v. *Carolene Products Co.*, 304 U. S. 144, 152, note 4. On the contrary, the human freedoms enumerated in the First Amendment and carried over into the Fourteenth Amendment are to be presumed to be invulnerable and any attempt to sweep away those freedoms is prima facie invalid. It follows that any restriction or prohibition must be justified by

those who deny that the freedoms have been unlawfully invaded. The burden was therefore on the state of Massachusetts to prove the reasonableness and necessity of prohibiting children from engaging in religious activity of the type involved in this case.

The burden in this instance, however, is not met by vague references to the reasonableness underlying child labor legislation in general. The great interest of the state in shielding minors from the evil vicissitudes of early life does not warrant every limitation on their religious training and activities. The reasonableness that justifies the prohibition of the ordinary distribution of literature in the public streets by children is not necessarily the reasonableness that justifies such a drastic restriction when the distribution is part of their religious faith. *Murdock* v. *Pennsylvania, supra,* 111. If the right of a child to practice its religion in that manner is to be forbidden by constitutional means, there must be convincing proof that such a practice constitutes a grave and immediate danger to the state or to the health, morals or welfare of the child. *West Virginia State Board of Education* v. *Barnette,* 319 U. S. 624, 639. The vital freedom of religion, which is "of the very essence of a scheme of ordered liberty," *Palko* v. *Connecticut,* 302 U. S. 319, 325, cannot be erased by slender references to the state's power to restrict the more secular activities of children.

The state, in my opinion, has completely failed to sustain its burden of proving the existence of any grave or immediate danger to any interest which it may lawfully protect. There is no proof that Betty Simmons' mode of worship constituted a serious menace to the public. It was carried on in an orderly, lawful manner at a public street corner. And "one who is rightfully on a street which the state has left open to the public carries with him there as elsewhere the constitutional right to express his views in an orderly fashion. This right extends to the communication of ideas by handbills and literature as well as by the spoken word." *Jamison* v. *Texas,* 318 U. S. 413, 416. The sidewalk, no less than the cathedral or the evangelist's tent, is a proper place, under the Constitution, for the orderly worship of God. Such use of the streets is as necessary to the Jehovah's Witnesses, the Salvation Army and others who practice religion without benefit of conventional shelters as is the use of the streets for purposes of passage.

It is claimed, however, that such activity was likely to affect adversely the health, morals and welfare of the child. Reference is made in the majority opinion to "the crippling effects of child employment, more especially in public places, and the possible harms arising from other activities subject to all the diverse influences of the street." To the extent that they flow from participation in ordinary commercial activities, these harms are irrelevant to this case. And the bare possibility that such harms might emanate from distribution of religious literature is not, standing alone, sufficient justification for restricting freedom of conscience and religion. Nor can parents or guardians be subjected to criminal liability because of vague possibilities that their religious teachings might cause injury to the child. The evils must be grave, immediate, substantial. Cf. *Bridges* v. *California*, 314 U. S. 252, 262. Yet there is not the slightest indication in this record, or in sources subject to judicial notice, that children engaged in distributing literature pursuant to their religious beliefs have been or are likely to be subject to any of the harmful "diverse influences of the street." Indeed, if probabilities are to be indulged in, the likelihood is that children engaged in serious religious endeavor are immune from such influences. Gambling, truancy, irregular eating and sleeping habits, and the more serious vices are not consistent with the high moral character ordinarily displayed by children fulfilling religious obligations. Moreover, Jehovah's Witness children invariably make their distributions in groups subject at all times to adult or parental control, as was done in this case. The dangers are thus exceedingly remote, to say the least. And the fact that the zealous exercise of the right to propagandize the community may result in violent or disorderly situations difficult for children to face is no excuse for prohibiting the exercise of that right.

No chapter in human history has been so largely written in terms of persecution and intolerance as the one dealing with religious freedom. From ancient times to the present day, the ingenuity of man has known no limits in its ability to forge weapons of oppression for use against those who dare to express or practice unorthodox religious beliefs. And the Jehovah's Witnesses are living proof of the fact that even in this nation, conceived as it was in the ideals of freedom, the right to practice religion in unconventional ways is still far from secure. Theirs is a militant and

unpopular faith, pursued with a fanatical zeal. They have suffered brutal beatings; their property has been destroyed; they have been harassed at every turn by the resurrection and enforcement of little used ordinances and statutes. See Mulder and Comisky, "Jehovah's Witnesses Mold Constitutional Law," 2 Bill of Rights Review, No. 4, p. 262. To them, along with other present-day religious minorities, befalls the burden of testing our devotion to the ideals and constitutional guarantees of religious freedom. We should therefore hesitate before approving the application of a statute that might be used as another instrument of oppression. Religious freedom is too sacred a right to be restricted or prohibited in any degree without convincing proof that a legitimate interest of the state is in grave danger.

Mr. Justice Jackson.

The novel feature of this decision is this: the Court holds that a state may apply child labor laws to restrict or prohibit an activity of which, as recently as last term, it held: "This form of religious activity occupies the same high estate under the First Amendment as do worship in the churches and preaching from the pulpits. It has the same claim to protection as the more orthodox and conventional exercises of religion." ". . . the mere fact that the religious literature is 'sold' by itinerant preachers rather than 'donated' does not transform evangelism into a commercial enterprise. If it did, then the passing of the collection plate in church would make the church service a commercial project. The constitutional rights of those spreading their religious beliefs through the spoken and printed word are not to be gauged by standards governing retailers or wholesalers of books." *Murdock* v. *Pennsylvania*, 319 U. S. 105, 109, 111.

It is difficult for me to believe that going upon the streets to accost the public is the same thing for application of public law as withdrawing to a private structure for religious worship. But if worship in the churches and the activity of Jehovah's Witnesses on the streets "occupy the same high estate" and have the "same claim to protection" it would seem that child labor laws may be applied to both if to either. If the *Murdock* doctrine stands along with today's decision, a foundation is laid for any state interven-

Mr. Justice Jackson's opinion should start on opinion of the Court and appear at page 10.

tion in the indoctrination and participation of children in religion, provided it is done in the name of their health or welfare.

This case brings to the surface the real basis of disagreement among members of this Court in previous Jehovah's Witness cases. *Murdock* v. *Pennsylvania*, 319 U. S. 105; *Martin* v. *Struthers*, 319 U. S. 141; *Jones* v. *Opelika*, 316 U. S. 584, 319 U. S. 103; *Douglas* v. *Jeannette*, 319 U. S. 157. Our basic difference seems to be as to the method of establishing limitations which of necessity bound religious freedom.

My own view may be shortly put: I think the limits begin to operate whenever activities begin to affect or collide with liberties of others or of the public. Religious activities which concern only members of the faith are and ought to be free—as nearly absolutely free as anything can be. But beyond these, many religious denominations or sects engage in collateral and secular activities intended to obtain means from unbelievers to sustain the worshippers and their leaders. They raise money, not merely by passing the plate to those who voluntarily attend services or by contributions by their own people, but by solicitations and drives addressed to the public by holding public dinners and entertainments, by various kinds of sales and Bingo games and lotteries. All such money-raising activities on a public scale are, I think, Caesar's affairs and may be regulated by the state so long as it does not discriminate against one because he is doing them for a religious purpose, and the regulation is not arbitrary and capricious, in violation of other provisions of the Constitution.

The Court in the *Murdock* case rejected this principle of separating immune religious activities from secular ones in declaring the disabilities which the Constitution imposed on local authorities. Instead, the Court now draws a line based on age that cuts across both true exercise of religion and auxiliary secular activities. I think this is not a correct principle for defining the activities immune from regulation on grounds of religion, and *Murdock* overrules the grounds on which I think affirmance should rest. I have no alternative but to dissent from the grounds of affirmance of a judgment which I think was rightly decided, and upon right grounds, by the Supreme Judicial Court of Massachusetts. 313 Mass. 223.

Mr. Justice ROBERTS and Mr. Justice FRANKFURTER join in this opinion.